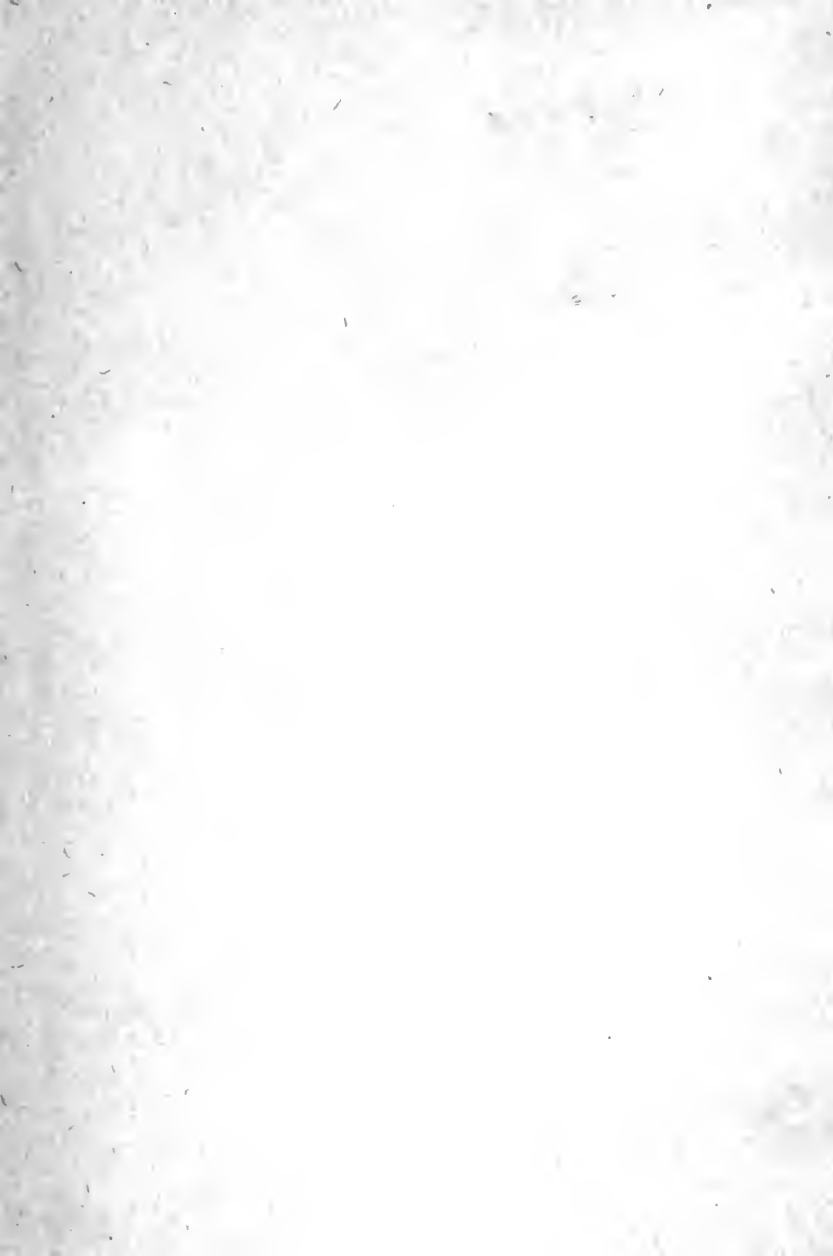






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OF

SCOTS LAW

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VOLUME XIV



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OF THE

LAW OF SCOTLAND

EDITED BY

JOHN CHISHOLM, M.A., LL.B., K.C.

ADVOCATE, AND OF THE MIDDLE TEMPLE BARRISTER-AT-LAW

VOLUME XIV

SUPPLEMENTARY

(BRINGING THE SEVERAL ARTICLES DOWN TO DATE)

WITH A COMPLETE INDEX

OF ALL MATTERS TREATED OF OR REFERRED TO IN THE WHOLE WORK

BY

WILLIAM GREEN, S.S.C.

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The Article on *Private Legislation Procedure* is
by Mr. H. P. MACMILLAN, M.A., LL.B., Advocate;
and that on *Vesting* is by Mr. J. M. IRVINE, M.A.,
LL.B., Advocate. The others are by the Editor.

GREEN'S ENCYCLOPÆDIA

OF

THE LAW OF SCOTLAND

Abandonment of Action (I. 1).—In an appeal for jury trial under the Judicature Act, 1825, the appellant may abandon as if the action had been instituted in the Court of Session (*Farquhar*, 1896, 24 R. 268).

Accidents on Railways.—The Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27), gives power to the Board of Trade to make rules, in regard to certain specified and other subjects, with the object of reducing or removing the dangers and risks incidental to railway service (s. 1). Provision is made for the publication of the proposed rules, to which objections may be lodged (s. 2); and, if not otherwise adjusted, the objections may be referred to the Railway and Canal Commissioners (s. 3). Penalties are imposed (s. 11) for contravention of, or failure to comply with, any rule under the Act.

Acquirenda of Bankrupt (I. 53).—Until the trustee has completed his title to *acquirenda* in terms of sec. 103, the *acquirenda* lie open to the diligence of creditors whose debts have been incurred subsequent to the date of sequestration (*Grant*, 1901, 3 F. 1016, 9 S. L. T. No. 123).

Actions.—See PROCESS (XIV. *infra*).

Actions, Vexatious.—See VEXATIOUS ACTIONS (SCOTLAND) ACT, 1898 (XIII. 119).

Adjournment (I. 89).—Absence of a written record of an adjournment is a fundamental nullity which vitiates the whole proceedings (*Craig*, 1897, 24 R. (J. C.) 88, 2 Ad. 344). A conviction, where there is no record of an adjournment, is not protected from review by sec. 495 of the Burgh Police (Scotland) Act, 1892 (*ibid.*; see also *Macarthur*, 1896, 2 Ad. 151, 23 R. (J. C.) 81).

Adjustment of Record.—See ACTIONS (ORDINARY PROCEDURE IN), I. 77; and PROCESS (XIV. *infra*).

Administration, Husband's Right of (I. 118).—A wife cannot, without the consent of her husband, purchase, with her separate funds, an annuity over her own life. Such consent does not require to be in writing or proved by writing; it may be given orally, and proved by parole (*Dick*, 1900 (O. H.), 7 S. L. T. No. 430, per Lord Kincairney).

Agency (see I. 163, X. 13).—See PRINCIPAL AND AGENT (XIV. *infra*).

Agricultural Holdings Acts (I. 172).—The Act of 1900 (63 & 64 Vict. c. 50) has made several changes on the provisions of the original Act.

1. *Improvements, etc.*—The list of improvements for which the tenant is entitled to compensation has been enlarged (s. 1, and *First Schedule*). Thus, the alteration of buildings, the making and planting of osier beds, the making or improving of works for the application of water power, the removal of permanent fences, the planting of hops, the planting of orchards or fruit bushes, the protecting of young fruit trees, and the erection of wirework in hop gardens, are included in the first part of the schedule (improvements to which the consent of the landlord is required). The chalking of land, clay-burning, consumption on the holding of *corn* not produced on the holding, and consumption of such *corn* and other stuffs by horses other than those regularly employed on the holding, consumption on the holding by cattle, sheep, pigs, or such horses, of corn proved by satisfactory evidence to have been produced and consumed on the holding, and the laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy, are now included in the third part of the schedule (improvements in respect of which consent of or notice to the landlord is not required).

2. *Procedure.*—The Act simplifies the procedure by arbitration, and allows an appeal to the Sheriff and the Court of Session in the form of a stated case (s. 3). Procedure in appeals to the Court of Session is regulated by Act of Sederunt of 11th June 1901.

[Johnston, *Agricultural Holdings Acts*, 5th ed.; Connell, *Agricultural Holdings Acts*.]

Market Gardens.—The Market Gardeners' Compensation Act, 1897 (60 & 61 Vict. c. 22), which is to be read and construed as part of the Agricultural Holdings (Scotland) Act, 1883, puts market gardens on a special footing. Where, after 1st January 1898, it is agreed in writing that a holding shall be let or treated as a market garden, the provisions of sec. 30 of the principal Act (*i.e.* those relating to the tenant's property in fixtures, machinery, etc.) shall extend to every fixture or building affixed or erected by the tenant to or upon such holding for the purposes of his trade as a market gardener (s. 3 (1)). Sec. 37 of the Agricultural Holdings Act is to be read and construed as if the words "with the consent in writing of his landlord" were not included (s. 3 (4)). A tenant may remove all fruit trees and bushes planted by him on the holding and not "permanently set out" (*i.e.* not planted in the spot where they are intended to remain during their fruit-bearing life). If the tenant does not remove such fruit trees or

bushes before the termination of his tenancy, these remain the property of the landlord, and the tenant is not entitled to any compensation in respect of them (s. 3 (5), and see Act 1900, Sched. I. Part 3). Special provision is made for leases current at the commencement of the Act (s. 4), and as to the payment of compensation as regards Crown lands (s. 5). In the case of leases current at the commencement of the Act, the Act is not retrospective *quoad* improvements made prior to the passing of the Act (*Smith*, 1900, 2 F. 1140, 8 S. L. T. No. 115). A "market garden" is "a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market gardening" (s. 6).

[See Johnston, *Agricultural Holdings Acts*, 5th ed., pp. 22, 62; Connell, *Agricultural Holdings Acts*, pp. 20, 94.]

The Agricultural Holdings Act, 1883, The Market Gardeners Act, 1897, and the Agricultural Holdings Act, 1900, may be cited together as the Agricultural Holdings (Scotland) Act, 1883-1900 (Act 1900, s. 14 (3)).

Agriculture, Board of.—See BOARD OF AGRICULTURE (XIV *infra*).

Aliment (I. 192).—I. *Parent and Child*.—The claim of children for support and upbringing is a debt against the estate of the father, payable in the first instance out of legitim (*Urquhart's Exr.*, 1899, 1 F. 1149; see also *Baillie's Trs.*, 1896 (O. H.), 33 S. L. R. 589, 4 S. L. T. No. 40; *Leslie*, 1899, 1 F. 601). A divorced husband remains liable for aliment of the children of the marriage (*Foxwell*, 1900, 2 F. 932). A father-in-law is not liable to aliment the deserted wife of his son (*Reid*, 1897 (O. H.), 4 S. L. T. No. 395; *Mackay*, 1903 (O. H.), 11 S. L. T. p. 299). A son-in-law not *lucratus* by his marriage is not liable to support his wife's parents (*Dear*, 1896 (O. H.), 3 S. L. T. No. 379). A young man apprenticed by his parents to a profession is entitled to reasonable aliment from them until he has learned his business (*Whyte*, 1901, 9 S. L. T. No. 85). It is no defence against an action by an illegitimate child against her deceased father's estate for aliment, that he had made an agreement with third parties for her adoption and aliment (*A. B.*, 1900, 2 F. 610). Where a mother petitioned for the custody of her illegitimate child from a person who had with her consent adopted it, the Court ordered her to pay a sum to the adopter for past aliment, but refused to make such a payment *a condition* of delivery of the child (*Kerrigan*, 1901, 4 F. 10).

II. *Husband and Wife*.—A wife's claim for aliment against the estate of her deceased husband is not precluded by her acceptance of a provision, in full of her legal rights, where such provision is inadequate for her support (*Anderson*, 1899, 1 F. 484; *Thomson*, 1898 (O. H.), 6 S. L. T. No. 336). A father-in-law is not liable to aliment the deserted wife of his son (*Reid*, *ut supra*; *Mackay*, *ut supra*). Where a wife admitted having committed adultery, the Lord Ordinary awarded her aliment against her husband, who refused to receive her into his house, but had not raised an action of divorce against her (*Milne*, 1901 (O. H.), 8 S. L. T. No. 299).

Alimentary Interest (I. 204).—A lady who was in right of an alimentary liferent under her father's trust settlement, conveyed to her marriage-contract trustees her whole estate for payment of the liferent to

her, and after her death to her husband. These liferents were declared to be alimentary. It was held that her conveyance did not carry her liferent under her father's settlement, and that she was entitled to demand direct payment (*Neilson's Trs.*, 1897, 24 R. 1135). Where testamentary trustees were directed to implement an obligation undertaken by the testator in an antenuptial marriage contract to pay an alimentary annuity, the trustees were held to have discharged their obligation by tendering a Government annuity for the sum named, payable to the marriage-contract trustees (*Graham's Trs.*, 1898, 1 F. 357). Trustees were directed to apply part of residue in the purchase of an annuity to a legatee for her "present support and subsistence only," it being neither assignable nor subject to the diligence of creditors, and there was no provision for a continuing trust. It was held that the legatee was entitled to payment in money of the share of residue (*Kennedy's Trs.*, 1901, 3 F. 1087). As to arrears, see *Ewing's Trs.*, 1900 (O. H.), 9 S. L. T. No. 308.

Amendment of Record (I. 216).—After an action for damages for breach of contract had been argued and was at *arizandum*, the pursuer was allowed to amend his record by substituting for the method of assessing damages originally proposed a statement that he had "suffered loss of profit to the amount sued for" (*Govan Rope and Sail Co.*, 1897, 24 R. 368). A pursuer may be allowed to amend a clerical error in his name in a summons (*Riach*, 1899, 1 F. 718), or in defender's name (*Watt*, 1901 (O. H.), 9 S. L. T. No. 172). A pursuer was allowed to amend his conclusions, after the record was closed, by adding the words "or severally" after the words "jointly and severally" (*Cook*, 1900, 2 F. 1011).

Anchors and Chain Cables Act, 1899.—This Statute simplifies and amends the law relating to the testing and sale of anchors and chain cables. The Board of Trade have power to grant licences for the testing of anchors and chain cables (s. 5), and must appoint a fit person to be inspector of testing establishments under the Act (s. 6). It is a misdemeanour for a maker of or dealer in anchors or chain cables to sell or contract to sell, or for any person to purchase or contract to purchase, for use on any British ship, any chain cable or anchor exceeding 168 lbs. in weight, unless it has been previously proved in accordance with the Act (s. 1). Every contract for the sale of a chain cable or of an anchor exceeding said weight shall, in the absence of an express stipulation to the contrary, be deemed to imply a warranty that the anchor or cable has before delivery been proved in accordance with the Act (s. 2). The burden of proving the express stipulation and the testing and stamping lies, in case of dispute, on the seller (*ibid.*). The Act does not relieve any maker, dealer, shipowner, or other person, from any responsibility in respect of any anchor or chain cable, to which, but for the Act, he would have been subject (s. 3). A licensed tester must, with all reasonable despatch, test every anchor and chain cable that is brought to the testing establishment for the purpose of being tested; and the anchors and cables are to be tested in the order in which they are brought to the establishment, unless the persons interested agree to the contrary (s. 7). Provision is made for stamping (s. 10); as to marks and certificates of private testing (s. 15); as to the mode of testing (s. 9 and Sched. II.); as to scale of charges (s. 11); and as to penalties (ss. 13, 14).

Ancient Monuments Protection Acts, 1882-1900.—The Ancient Monuments Protection Act, 1882 (45 & 46 Vict. c. 73), constituted the Commissioners of Works the guardians of ancient monuments. The Act of 1900 (63 & 64 Vict. c. 34) gives similar powers to county councils (s. 2). Such monuments may come under the guardianship of the Commissioners in three ways: (1) The owner of any ancient monuments may, by deed under his hand, constitute the Commissioners guardians of the monument (s. 2). (2) They may, with consent of the Treasury, purchase any ancient monument—the Lands Clauses Act being incorporated with the Act 1882 for such purpose, with the exception of the provisions therein which relate to the purchase and taking of lands otherwise than by agreement (s. 3). (3) Any person may, by deed or will, give or bequeath to the Commissioners his estate or interest in any ancient monument, and the Commissioners may accept the same if they think expedient (s. 4). The Commissioners must appoint one or more inspectors of ancient monuments, to report on their condition and as to the best mode of preserving them (s. 5).

Penalties.—If any person injures or defaces an ancient monument to which the Acts apply, he is liable on summary conviction, at the discretion of the Court, either—(1) to forfeit any sum not exceeding £5, and, in addition thereto, to pay such sum as the Court may think just for the purpose of repairing any damage caused by him; or (2) to be imprisoned with or without hard labour for any term not exceeding one month (s. 6). The owner of an ancient monument is not so punishable in respect of any act which he may do to such monument, except in cases where the Commissioners have been constituted guardians, in which case he shall be deemed to have relinquished his rights of ownership so far as relates to any injury or defacement, and may be dealt with as if he were not the owner.

The Act 1882 (as regards Scotland), s. 21, defines *ancient monuments* to be monuments enumerated in the schedule, “and any other monument of a like character to which the Commissioners of Works at the request of the owners thereof may consent to become guardians”—and “monument” includes the site, and such portion of land adjoining as may be required to fence, cover in, or otherwise preserve the monument from injury, and also the “means of access to such monument” (s. 9).

The Act of 1900, s. 6, defines *monument* to mean “any structure, erection, or monument of historic or architectural interest, or any remains thereof.” Where the Commissioners are of opinion that the preservation of any *such* monument is a matter of public interest, they may, at the request of the owner, consent to become the guardians thereof; and the Act of 1882 shall thereupon apply to such monument (Act 1900, s. 1). The Commissioners may not, however, become the guardians of any structure which is occupied as a dwelling-place by any person other than a person employed as a caretaker thereof, and his family.

County Councils.—The Act of 1900 confers similar, but less wide, powers on county councils. A county council, if they think fit, *may purchase* by agreement any monument (as defined in the Act of 1900, see *supra*) situate in their county, or in any adjacent county; and they may, at the request of the owner, consent to *become the guardians* of any such monument; and may *undertake or contribute towards* the cost of preserving, maintaining, and managing any such monument, whether they have purchased the same, or have become the guardians thereof or not (s. 3 (1)). The incorporation of the Lands Clauses Acts (see *supra*) is to have effect in relation to a county council and any monument under the Act of 1900. So also do

the penalties provided in the Act of 1882 (Act 1900, s. 3 (2)). The county council or the Commissioners of Works may receive *voluntary contributions* towards the cost of maintenance and preservation of any monument of which they may become the guardians or purchasers under the Acts; and they may enter into *agreements* with the owner or others as to the maintenance and preservation, and the cost thereof (Act 1900, s. 3). The Commissioners of Works and the county council may, in respect of any monument in the county or in any adjacent county of which they are the owners or guardians (but, where they are only guardians, then with consent of the owners), enter into and carry into effect any agreements for the *transfer* from the Commissioners to the county council, or *vice versa*, of such monument, or of any estate or interest therein, or of the guardianship thereof (*ibid.* s. 4).

Access.—The public have a right of access to any monument of which the Commissioners of Works or any county council are the owners or guardians, but where they are guardians only with consent of the owner, at such times and under such regulations as the Commissioners or county council prescribe (Act 1900, s. 5).

Animals.—See DISEASES OF ANIMALS ACT, 1903 (XIV. *infra*).

Annuities.—See ALIMENTARY INTEREST (XIV. *supra*).

Appeal to Court of Session from Sheriff Court.

—(a) *Appeals for Review.*—If a petition has been incompetently presented in the Sheriff Court, and dismissed by the Sheriff on the ground of no jurisdiction, the Court, on appeal, will not adopt the petition and treat it as if it had originated in the Court of Session (*Gillan*, 1898, 1 F. 183). An order made by a Sheriff on an application for caption is not an interlocutor in the *lis* between the parties, and will not be reviewed by the Court on appeal (*Broatch*, 1898, 1 F. 303). It is incompetent to appeal against the deliverance of a Sheriff refusing his sanction to a deed of arrangement (*Coutts & Co.*, 1900, 2 F. 1066). In a question of competency in appeals in a cessio, the value of the cause must be measured by the amount of the claim contained in the initial writ (*e.g.*, in the affidavit of claim), and not by the value determined as a result of the judgment brought under review (*Henderson*, 1896, 23 R. 659). In a case stated in terms of the Friendly Societies Act, 1875, s. 22 (d) (e), it is competent to appeal a small debt action arising out of a dispute between a society and one of its members, although the sum at issue is less than £25 (*Linton*, 1895, 23 R. 51). (See also as to value of cause, *McKimmie's Trs.*, 1899, 2 F. 156; *Broatch*, *ut supra*; *Standard Ship-owners' Mutual Association*, 1896, 23 R. 870.) It is competent to appeal against a Sheriff's judgment disposing only of a question of expenses (*Grego*, 1901, 3 F. 450).

Civil or Criminal.—In a complaint against a corporation under the Summary Jurisdiction Acts, 1864 and 1881, and the Criminal Procedure Act, 1887, the jurisdiction is civil, and an appeal by stated case lies to the Court of Session, and not to the High Court of Justiciary (*Simpson*, 1902, 4 F. 611; *N. B. Rwy.*, 1900, 3 Ad. 121, 2 F. (J. C.) 28; *Lindsay*, 1902 (4 F. (J. C.) 46).

(b) *Appeals for Removal of Process* (I. 262).—The Court refused to

remit to the Sheriff an action for damages for personal injury, originating in the Sheriff Court and appealed to the Court of Session for jury trial (*Jamieson*, 1898, 25 R. 551). An action for accounting was so remitted (*Tosh*, 1896, 24 R. 54); and a case appealed for jury trial was sent back to the Sheriff for proof where the Court were of opinion that it was unsuited for trial by jury (*Maclean*, 1898, 6 S. L. T. No. 227). Where neither party in an appeal for jury trial claims trial by jury, the Court will, if the relevancy be sustained, remit to the Sheriff to proceed with the proof (*Fife*, 1895, 23 R. 8). (As to preliminary proof, see *McCafferty*, 1898, 25 R. 872; and *Annan*, 1898, 1 F. 326.)

Appeal to High Court of Justiciary (I. 264).—Proceedings taken for punishment, by way of fine, of an incorporated society (which cannot be imprisoned) are civil, and an appeal to the High Court is incompetent (*Summary Procedure Act*, 1864, s. 28; *N. B. Rwy. Co.*, 1900, 3 A. 121, 2 F. (J. C.), 28; see also *Lindsay*, 1902, 4 F. (J. C.) 46; *Simpson*, 1902, 4 F. 611).

Appeal to House of Lords (I. 266).—There is no appeal to the House of Lords from the judgment of the Court of Session upon a case stated by the Sheriff under the Workmen's Compensation Act, 1897 (*McKinnon*, 1901, 3 F. (H. L.) 1).

Appointment, Power of.—A power to apportion among fiars does not involve the power to restrict the interest of one of them to a life rent, although the restriction be coupled with a power of disposal *mortis causâ* of the apportioned share (*Warrand's Trs.*, 1901, 3 F. 369).

Arbiter; Arbitration (I. 294; I. 297).—A clause in a contract provided that any dispute arising should be referred to arbitration "in the customary manner of the timber trade." This was held to be a valid arbitration clause, under sec. 1 of the Arbitration (Scotland) Act, 1894; and the Court was prepared, in the exercise of its discretion, to appoint an arbiter under secs. 2 and 3 (*Douglas & Co.*, 1899, 2 F. 575).

Where a proposed arbiter had promised the party naming him that he would do the best for him he could, he was held to be thereby disqualified (*Pekholtry*, 1899 (O. H.), 7 S. L. T. No. 156); see also *Caledonian Rwy. Co.*, 1897, 25 R. 74). So also, where an arbiter named in a contract privately tells one of the parties that he is in the right in a dispute under the contract, he is disqualified from acting as arbiter (*McLauchlan & Brown*, 1900, 8 S. L. T. No. 226). But a man may appoint himself arbiter under a contract between himself and another (*Buehan*, 1902, 4 F. 620). An arbiter, apart from special agreement, has a claim for remuneration, under sec. 32 of the Lands Clauses Act, 1845 (*Murray*, 1900, 2 F. 460).

Where a contract contains an arbitration clause in general terms, binding the parties to refer all questions with regard to the construction and meaning of the contract, and one of the parties resorts to a Court of law for the enforcement of the clause against the other, it is not enough for the pursuer to table the general proposition that a dispute has arisen, and to demand that it be straightway submitted to arbitration. He must

state what the question is, and the Court must construe the contract to the extent of determining whether the question so defined falls within the arbitration clause or not (*Stewart*, 1898 (O. H.), 6 S. L. T. No. 93; *Mackay*, 20 R. 1093; *Pearson*, 21 D. 419; *Mingle*, 10 M. 901). A reference clause in a contract can operate only between the parties to the contract; and where one of the parties named in a contract denies that he was ever bound by it, the question raised is one for the Court to decide, and not for the arbiter (*Ranshoff & Wissler*, 1897, 25 R. 284). Although the rules of a society provide that, in disputes between it and its members, recourse shall not be had to the civil Courts, the jurisdiction of the Courts is not excluded where the society has acted *ultra vires* (*Skerret*, 1896, 23 R. 468; cf. *Rombach*, 1896 (O. H.), 4 S. L. T. 264). Where there are several questions in dispute, involving payment of money, an arbiter may award a gross sum, without dealing separately with the questions submitted (*Paterson & Son*, 1900, 3 F. (H. L.) 34). In a submission it was provided that an arbiter should issue his award by a certain date. He did not issue the award until a year later. The Court held that the time fixed was of the essence of the contract, and that the award was invalid (*Macgillivray*, 1900 (O. H.), 8 S. L. T. No. 186).

[Irons and Melville, *Law of Arbitration in Scotland*; Wood and Macphail, *Law of Arbitration in Scotland*.]

Arrestment and Furthcoming (I. 310).—*Execution*.—An arrestment in the hands of a corporation is well executed by the delivery of a copy to a servant of the corporation at its proper place of business—in the case of a city corporation, at the city chambers (*Glasgow Corporation*, 1898, 25 R. 690). But where an Act of Parliament provides that certain commissioners shall be a body corporate, “and shall have power to sue and be sued in that name alone,” arrestments used in the hands of the clerk to the commissioners are invalid (*Gall*, 1901 (O. H.), 9 S. L. T. No. 107).

Competition.—Although an arrester using arrestments subsequent to a previous arrestment *ad jurisdictionem fundandam* may not defeat the purpose of that arrestment by enforcing furthcoming of the fund arrested before citation has followed on that arrestment, yet citation having followed, the arrestment to found jurisdiction having served its purpose, flies off, and the rights of the parties to the fund fall to be determined according to the ordinary rules of priority (*Stillie's Trs.*, 1898 (O. H.), 6 S. L. T. No. 222; see also *Harvey's Foker Distillery*, 1901 (O. H.), 8 S. L. T. No. 294).

Arrestment Jurisdictionis Fundandæ Causâ (I. 321).—Arrestments do not confer on the Courts jurisdiction to entertain declaratory conclusions (*Williams*, 1897 (O. H.), 5 S. L. T. No. 275); but jurisdiction founded by arrestment extends to the pronouncing of decrees *ad factum præstandum* (*Powell*, 1900 (O. H.), 8 S. L. T. No. 152).

There is no fixed time within which an arrestment to found jurisdiction must be followed by a summons (*Craig*, 1896, 23 R. 500).

See also ARRESTMENT AND FURTHCOMING, *Competition*, *supra*.

Artizans' Dwellings.—See HOUSING OF THE WORKING CLASSES (XIV. *infra*).

Assessment.—See RATING (XIV. *infra*).

Assessor of Railways and Canals (I. 331).—By 60 & 61 Vict. c. 12, provision is made for superannuation allowances (to be fixed by the Secretary for Scotland) to the assessor of railways and canals, and to the clerks and other officers whom he may be allowed to employ permanently in the execution of his duties under the Lands Valuation (Scotland) Act, 1854. The conditions are set forth in the Act.

Auction or Roup (I. 349).—An association of butchers induced cattle salesmen, who were accustomed to sell their cattle at a certain cattle market, to refuse to sell to co-operative stores. The salesmen enjoyed no monopoly of sale at the cattle market in question. It was held that the salesmen were entitled to refuse to accept bids from co-operative stores (*Scottish Co-operative Wholesale Society Limited*, 1898 (O. H.), 5 S. L. T. No. 336). Five out of six owners of a ship exposed it for sale by auction on the warrant of a decree of set and sale. There was no clause in the articles of roup entitling them to bid. It was held that a purchase by them fell to be reduced at the instance of the sixth owner (*Morrice*, 1902, 39 S. L. R. 409).

Bailie (I. 377).—See TOWN COUNCILS ACTS (XIV. *infra*).

Bank (I. 379).—If a bank, with funds at a customer's credit, dishonour that customer's cheque, it is liable to him for the damage done to his financial reputation (*King*, 1899, 1 F. 928).

Bankruptcy (II. 1).—See also CESSIO BONORUM; and SEQUESTRATION (XIV. *infra*).

Notour Bankruptcy (see II. 3).—The modes of constituting notour bankruptcy introduced by sec. 6 of the Debtors (Scotland) Act, 1880, apply only to cases in which imprisonment is rendered incompetent by that Act, and do not apply, therefore, to companies, which *sua natura* could not be imprisoned (*Hodge*, 1900, 2 F. 983).

Endurance of Notour Bankruptcy (II. 6).—Notour bankruptcy does not cease by reason of the debtor having made an arrangement with his creditors for payment of their claims by instalments over an extended period of time (*Galbraith, Niell's Trs.*, 1898 (O. H.), 36 S. L. R. 139).

Preferences (II. 9).—A payment by an endorsed cheque is struck at as illegal by the Act 1696, c. 5 (*Anderson's Trs.*, 1899, 1 F. 90). Where a bankrupt, who has obtained the consent of his creditors to a composition contract, assigns valuable rights to a particular creditor in return for money wherewith to pay the composition, this is not a *pactum illicitum* (*Key*, 1899, 2 F. 302). A creditor of an insolvent debtor may sue an action of declarator that a particular transaction between the debtor and another creditor constitutes an illegal preference (*M'Laren's Trs.*, 1897, 24 R. 920; see also *Cook*, 1896, 23 R. 925). (See also as to illegal preferences, *Commercial Bank*, 1901 (O. H.), 9 S. L. T. No. 138; *Hill's Trs.*, 1901 (O. H.), 9 S. L. T. No. 387; *Craig's Trs.*, 1902, 4 F. 1132; *Browne's Trs.*, 1902 (O. H.), 10 S. L. T. 57.)

Bill of Exceptions (II. 72).—When the judge presiding at a jury trial is asked to give a direction and refuses, it is not enough, on a bill of exceptions, to show that the proposed direction correctly formulated a legal proposition; it must also be made clear that such a direction was necessary to guide the jury to a right verdict (*Wood*, 1899, 2 F. 1).

Bill of Exchange (I. 75).—*Parties*.—Promissory notes signed by a married woman cannot be enforced against her unless exceptional grounds of liability be shown (*Davis*, 1898 (O. H.), 6 S. L. T. No. 132; see also *Gibson*, 1900 (O. H.), 7 S. L. T. No. 385; *Jack*, 1900 (O. H.), 8 S. L. T. No. 2).

Consideration.—As to extortion, see *Young*, 1896, 23 R. 419.

Proof.—Where two or more persons accept a bill, it is competent to prove by parole their rights *inter se* (*Crosbie*, 1900, 3 F. 83).

In an action on a bill of exchange the bill must be libelled in the summons (*Davis*, 1897, 24 R. 297); see also *Bank of Scotland*, 1898, 1 F. 96; *Sanderson*, 1898 (O. H.), 5 S. L. T. No. 478).

Prescription.—Prescription of a bill is interrupted by the service of an action laid upon the bill, although the summons was defective in respect that it did not libel the bill (leave to amend being granted). (*Bank of Scotland*, 1898, 1 F. 96.)

Birds, Protection of Wild (II. 139).—When any person is convicted of an offence against the Wild Birds Protection Acts, 1880 to 1896, the Court may, in addition to any penalty which may be imposed, order any wild bird, or wild bird's egg, in respect of which the offence has been committed, to be forfeited and disposed of as the Court may think fit (Wild Birds Protection Act, 1902, 2 Edw. VII. c. 6, s. 1).

Board of Agriculture and Fisheries.—A Board of Agriculture for Great Britain was established by 52 & 53 Vict. c. 30. The Board consists of the Lord President of the Council, the Principal Secretaries of State, the First Commissioner of the Treasury, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary for Scotland, and such other persons as the Sovereign may appoint, with a President of the Board to be appointed from the Privy Council. Amongst the powers transferred to the Board were the powers of the Privy Council under the Destructive Insects Act, 1877, and the Contagious Diseases (Animals) Acts, 1878, 1884, 1886 (s. 2 and Sched.); and powers as to the muzzling, etc., of dogs are conferred on the Board (s. 3).

By 3 Edw. VII. c. 31, the Board is hereafter to be styled the Board of Agriculture and Fisheries, and the powers and duties of the Board of Trade under the Fisheries Acts (specified in the Act), or under any local and personal Act which relates solely to the industry of fishing, are transferred to the Board. See FISHINGS (XIV. *infra*).

Burgh (II. 258).—See POLICE (XIV. *infra*); TOWN COUNCILS ACTS, 1900, 1903 (XIV. *infra*). See also DRAINAGE (IV. 357); PUBLIC HEALTH, *Drainage*, etc. (X. 103). The Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. VII. c. 24), contains important pro-

visions as to money borrowed for sewers, etc., and as to the transference of special districts.

SECURITY FOR SUMS BORROWED FOR SEWERS, ETC.—Where sums of money have been borrowed or are owing by the town council or commissioners of a burgh under any Act for purposes of sewerage and draining or water supply, the town council as the authority under the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), as amended by the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), are to provide the sums necessary for repaying the principal and paying the interest of such sums out of the assessments after mentioned. The sums constitute a charge on the said assessments, and the creditors have all the powers, rights, and remedies at the passing of the Act exercisable by a lender of money on the security of the assessments originally assigned to them, the said assessments after mentioned being deemed to be assigned to such creditors in security of their debt (s. 1).

SEWER AND WATER ASSESSMENTS.—In any burgh, or in any special or separate drainage district formed therein under any Act, the expense incurred either before or after the passing of this Act for sewerage and drainage or water supply, as the case may be, within the same, or for the purposes thereof, and the sums necessary for repayment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, are to be paid out of a sewer assessment or water assessment, as the case may be, which the town council of the burgh are to raise and levy on and within such burgh, or (in the case of the sewer assessment) within such special or separate district, in the same manner, and with the same remedies and modes of recovery and incidents, as are provided for the public health general assessment therein. But where a special or separate drainage district has been formed under the provisions of any Act, and drainage works have been executed and are maintained therein, the lands and heritages situated within such special or separate district are not liable to assessment for the expense of sewerage and drainage works in other parts of the burgh. For shops the water assessment is chargeable only on one-fourth of the rental of the premises, unless in special circumstances the town council see cause to charge the ordinary rates, and in that case it is lawful for any person who may think himself aggrieved to apply to the Sheriff in the manner provided in the Burgh Police Act, 1892. "The sewer assessment and the water assessment together shall not in any burgh or special or separate drainage district exceed the rate of four shillings in the pound: Provided that if the produce of a rate of four shillings in the pound in any burgh or special or separate drainage district shall not be sufficient to meet the expenditure (including the annual charge for interest and repayment of debt) *bonâ fide* incurred or contemplated within such burgh or special or separate district, it shall be lawful to increase such rate to such extent as may have been approved of by the Local Government Board for Scotland." A rate cannot be imposed in respect of the expenditure within any special or separate drainage district upon any premises without such district.

TRANSFERENCE OF SPECIAL DISTRICTS.—"All special or separate drainage districts that may have been formed in any burgh under any Public Health Act shall, subject to the provisions of this Act, be deemed to be drainage districts under the Burgh Police Act, 1892, and any special or separate water supply districts which have been so formed shall cease to exist as such, and shall be united to the other parts of the burgh for the purposes of water supply, and all rights and liabilities connected therewith:

Provided that nothing herein contained shall affect any special water supply district partly within a county and partly within a burgh, or the provisions relating thereto of sec. 81 of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), as amended by sec. 44 of the Local Government (Scotland) Act, 1894 (56 & 57 Vict. c. 73)."

AMENDMENT OF 55 & 56 VICT. c. 55.—(1) Sec. 233 and sec. 236 of the Burgh Police Act shall be read as if the sewer assessment before mentioned were substituted for the sewer rates therein mentioned. (2) Sec. 264 of the principal Act shall be read as though for the words "portion of the burgh general assessment applicable to the water supply" the words "water assessment" were substituted. (3) Sec. 347 of the principal Act shall be read as though for the words "burgh general assessment so far as it is applicable to water" the words "water assessment" were substituted. (4) Sec. 363 of the principal Act shall be read and have effect as if for the words "said assessments" the words "sewer assessments" were substituted. (5) Notwithstanding anything contained in sec. 269 of the principal Act, the provisions of that Act with respect to supply of water shall apply in the case of any burgh which is supplied with water by the town council thereof under the powers of any local Act or Acts.

TOWN COUNCIL, ETC., TO HAVE POWERS OF 60 & 61 VICT. c. 38.—The powers and duties of the town council of any burgh, as the authority under the principal Act, with reference to sewerage and drainage or water supply, shall extend to the whole area of the burgh as existing for the purposes of the Public Health (Scotland) Act, 1897, and the town council of any burgh, as the authority under the principal Act, in addition to the powers conferred upon them by the principal Act, or any other Act, shall, with reference to sewerage and drainage or water supply within such area, have the same rights, powers, and privileges as are conferred by the Public Health (Scotland) Act, 1897, upon local authorities under the Act in districts other than burghs, with the exception of the rights, powers, and privileges conferred by secs. 122 and 131 of the last-mentioned Act, to which sections the present section shall not apply, and in so far as necessary for giving effect to this enactment the last-mentioned Act and the Acts and parts of Acts incorporated therewith are, subject to the necessary modifications, incorporated with the principal Act: Provided that all costs and charges incurred by the town council in the exercise of such rights, powers, and privileges shall be provided for out of the sewer assessment or water assessment before mentioned, as the case may be, and that where it shall be necessary for the town council to borrow money for the purposes of sewerage and drainage or water supply, they shall be entitled to do so on the security of the sewer assessment or water assessment hereinbefore mentioned in lieu of the assessments mentioned in the principal Act, or the Public Health (Scotland) Act, 1897, as the case may be.

The above provisions do not apply to any burgh to which the Burgh Police Act, 1892, does not apply, or to any burgh in which at the passing of the Act a local Act (including an Act confirming a provisional order) is in force with respect to sewerage, drainage, or water supply. But the town council of any burgh to which these provisions do not apply, may by resolution adopt them; and they shall in that case come into force in the burgh after the date specified in the resolution. Where such a resolution is passed, the Acts specified in the schedule to the Act, in so far as they apply to the burgh in question, are to be deemed to be repealed to the extent specified; and all local Acts (including as aforesaid) which apply exclusively to the burgh, so far as inconsistent with or dealing with the

same matters as the above provisions of the Act, are also to be repealed, and must be specified in the resolution. Every such resolution must be forthwith communicated to the Secretary for Scotland (s. 8).

AMENDMENT OF 60 & 61 VICT. c. 38.—(1) Sec. 147 of the Public Health (Scotland) Act, 1897, shall be read as though the words “or in the Burgh Police (Scotland) Act, 1892,” were inserted after the word “herein.” (2) Sec. 261 of the Burgh Police Act, 1892, shall be read as if for the words “for other purposes” the words “for these purposes” were substituted (s. 6).

The Acts specified in the schedule are repealed to the extent mentioned in so far as these apply to burghs to which the Act applies from its commencement; viz. (1) Burgh Police (Scotland) Act, 1892; sec. 227, from the words “and the commissioners” to the end of the section; sec. 232; sec. 340, from “a rate equal to four shillings” to “otherwise at”; secs. 361, 362, 364. (2) Public Health (Scotland) Act, 1897, secs. 101, 113, 133, 134, 137. See DRAINAGE (IV. 357); PUBLIC HEALTH, *Drainage* (X. 103).

Burgh Police (Scotland) Act, 1903.—See POLICE (XIV. *infra*).

Cables (Chain).—See ANCHORS AND CHAIN CABLES ACT, 1899 (XIV. *supra*).

Cessio Bonorum (II. 357).—An application by a creditor to have his bankrupt debtor ordained to execute a disposition *omnium bonorum* is an application for an order *ad factum prestandum*, and may be appealed, although the claim of the petitioning creditor is less in amount than £25 (*Broatch*, 1898, 1 F. 303).

Charitable Trust (II. 393).—Where the purposes of a charitable trust had failed, the Court granted authority to the trustees to pay part of the trust funds to officials and servants (*Falkirk Schools*, 1899, 1 F. 1175). Subscriptions to a charitable trust cannot be recovered if the objects of the trust fail and it comes to be wound up (*ibid.*; see also *Shaw Stewart*, 1899, 7 S. L. T. No. 127; 36 S. L. R. 924). For example of what is not a charitable trust, but rather of the nature of a friendly society, see *Smith* (1899, 1 F. 741, 6 S. L. T. No. 458). The Court have refused to sanction the extension of a scheme providing a bursary for young men so as to include young women (*Dallas*, 1903, 11 S. L. T. p. 245).

Children, Employment of.—The Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21), prohibits the employment of any boy under *thirteen* in any mine below ground. This alters secs. 4 and 5 of the Coal Mines Regulation Act, 1887, and sec. 4 of the Metalliferous Mines Regulation Act, 1872, by increasing the age from twelve to thirteen.

The Employment of Children Act, 1903 (3 Edw. VII. c. 45), which came into operation on 1st January 1904, makes important regulations regarding the employment of children.

POWER TO MAKE BYELAWS FOR REGULATING THE EMPLOYMENT OF CHILDREN.—Any local authority may make byelaws—(i.) prescribing for all children, or for boys and girls separately, and with respect to all occupations, or to any specified occupation,—(a) the age below which employment is illegal; and (b) the hours between which employment is illegal; and (c) the number of daily and weekly hours beyond which employment is illegal: (ii.) prohibiting absolutely or permitting, subject to conditions, the employment of children in any specified occupation (s. 1).

POWER TO MAKE BYELAWS FOR THE REGULATION OF STREET TRADING BY PERSON UNDER SIXTEEN.—Any local authority may make byelaws with respect to street trading by persons under the age of sixteen, and may by such byelaws—(a) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the byelaw, or subject to the holding of a licence to trade to be granted by the local authority; (b) regulate the conditions on which such licences may be granted, suspended, and revoked; (c) determine the days and hours during which, and the places at which, such street trading may be carried on; (d) require such street traders to wear badges; (e) regulate generally the conduct of such traders: Provided as follows:—(1) The grant of a licence or the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade; (2) the local authority, in making byelaws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places (s. 2).

GENERAL RESTRICTIONS ON EMPLOYMENT OF CHILDREN.—(1) A child shall not be employed between the hours of nine in the evening and six in the morning: Provided that any local authority may, by byelaw, vary these hours either generally or for any specified occupation.

(2) A child under the age of eleven years shall not be employed in street trading.

(3) No child who is employed half-time under the Factory and Workshop Act, 1901, shall be employed in any other occupation.

(4) A child shall not be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child.

(5) A child shall not be employed in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition.

(6) If the local authority send to the employer of any child a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child (s. 3).

A byelaw made under the Act is not to have any effect until confirmed by the Secretary for Scotland, and is not to be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary for Scotland may by general or special order direct. The Secretary for Scotland is, before confirming any byelaw, to consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby; and may, before confirming any byelaw, order that a local inquiry be held with respect to the byelaw or with respect to any objections thereto. Byelaws made under the Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

Byelaws made by a county council are not of any force or effect within any burgh or urban district the council of which is constituted a local authority under the Act. Byelaws under the Prevention of Cruelty to Children Act, 1894, are to be made by the same authority and confirmed in the same way as byelaws under this Act (s. 4).

OFFENCES AND PENALTIES.—“(1) If any person employs a child or other person under the age of sixteen in contravention of this Act, or of any byelaw under this Act, he shall be liable on summary conviction to a fine not exceeding forty shillings, or, in case of a second or subsequent offence, not exceeding five pounds.

“(2) If any parent or guardian of a child or other person under the age of sixteen has conduced to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction to the like fine.

“(3) If any person under the age of sixteen contravenes the provisions of any byelaw as to street trading made under this Act, he shall be liable on summary conviction to a fine not exceeding twenty shillings, and in case of a second or subsequent offence, if a child, to be sent to an industrial school, and, if not a child, to a fine not exceeding five pounds.

“(4) In lieu of ordering a child to be sent under this section to an industrial school, a Court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years: And the provisions of secs. 7 and 8 of the Prevention of Cruelty to Children Act, 1894, shall, with the necessary modifications, apply to any order for the disposal of a child made under this subsection” (s. 5).

OFFENCES BY AGENTS OR WORKMEN AND BY PARENTS.—“(1) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

“(2) Where a child is taken into employment in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

“(3) Where an employer is charged with any offence under this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the Court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine.

“(4) When it is made to appear to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer shall proceed against the person whom

he believes to be the actual offender in the first instance without first proceeding against the employer" (s. 6).

LIMITATION OF TIME.—With respect to summary proceedings for offences and fines under this Act, and any byelaws made thereunder, the information must be laid within three months after the commission of the offence.

POWER OF OFFICER OF LOCAL AUTHORITY TO ENTER PLACE OF EMPLOYMENT.—If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours from the date of the order, and examine such place and any person therein touching the employment of any child therein. Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding twenty pounds (s. 8).

EMPLOYMENT IN FACTORIES.—Byelaws made under the Act do not apply to any child above twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887, so far as regards that employment; and in the application of sec. 3 to children employed under those Acts, the inspectors appointed under those Acts are substituted for the local authority in respect of such employment (s. 9).

SAVING FOR INDUSTRIAL AND OTHER SCHOOLS.—Nothing in this Act or in any byelaw made thereunder is to apply to the exercise of manual labour by any child under order of detention in a certified industrial or reformatory school, or by any child while receiving instruction in manual labour in any school (s. 10).

Sec. 3 of the Prevention of Cruelty to Children Act, 1894 (which regulates the employment of children in public entertainments), is to have effect as if re-enacted in the Act: Provided—(1) A licensee under that section shall not be granted to any child under the age of ten years; and (2) any inspector or other officer charged with the execution of this Act shall have and may exercise all the powers of an inspector of factories and workshops under that section, and that section shall apply accordingly (s. 11).

DEFINITIONS.—In the Act—The expression "child" means a person under the age of fourteen years: The expression "guardian," used in reference to a child, includes any person who is liable to maintain or has the actual custody of the child: The expressions "employ" and "employment," used in reference to a child, include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person: The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blackening, and any other like occupation carried on in streets or public places (s. 13).

APPLICATION TO SCOTLAND.—In the application of the Act to Scotland—"The Sheriff or Sheriff-substitute" shall be substituted for "a Court of summary jurisdiction": Any fine or penalty under this Act shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts: The expression "local authority," in secs. 1 and 3 of the Act, shall mean the school board; and in sec. 2 of this Act shall mean, in the case of a royal, parliamentary, or police burgh having, within its boundary for police purposes, according to the census of nineteen hundred and one, a population

of or exceeding seven thousand, and in the case of the burgh of Coatbridge, the town council, and elsewhere the county council, and for the purposes of sec. 2 every burgh other than those hereinbefore specified shall be held to form part of the county within which it is situated: Provided that in sec. 8 of the Local Government (Scotland) Act, 1889, the expression "purposes hereinafter mentioned" shall be deemed to include the purposes of this Act: Nothing in the Act shall affect the power of the school board to grant exemptions in certain employments as provided by subsec. 3 of sec. 7 of the Education (Scotland) Act, 1878, and the expression "this Act" in the said section shall be deemed to include the Employment of Children Act, 1903: A byelaw shall not be made by a council under the Act until the expiry of a period of one month after such byelaw as proposed to be made has been communicated to the clerk to each school board of a parish, burgh, or district comprised or partly comprised within the area of such council for the purposes of this Act, and such council shall give due consideration to any observations received from any such school board within such period; and nothing in the Act shall make it lawful for any child to be employed in contravention of sec. 6 of the Education (Scotland) Act, 1878, or sec. 2 of the Education (Scotland) Act, 1901: Sec. 276 of the Burgh Police (Scotland) Act, 1892, is repealed (s. 14).

EXPENSES OF ACT IN SCOTLAND.—Any expenses incurred by a local authority in Scotland in carrying into effect the provisions of this Act or any byelaws made thereunder shall be paid, where the local authority is a county council, out of the public health general assessment leviable within the county or a district of the county, provided that in any royal, parliamentary, or police burgh having, according to the census of nineteen hundred and one, a population of less than seven thousand, a proportion of such expenses corresponding to the valuation of such burgh shall be paid to the county council out of the public health general assessment leviable in such burgh, in compliance with a requisition to that effect to be sent to the town council of such burgh annually not later than the month of October in each year, and, where the local authority is a town council, out of the public health general assessment, and shall be paid, where the local authority is a school board, out of the school rate (s. 15). See also DANGEROUS PERFORMANCES (XIV. *infra*); EDUCATION (XIV. *infra*).

Children, Sale of Intoxicating Liquors to. — See INTOXICATING LIQUORS (SALE TO CHILDREN) (XIV. *infra*).

Circuit Clerks of Justiciary (see also Vol. III. at p. 55). —The duties of clerk to the High Court of Justiciary, when sitting elsewhere than in Edinburgh, were formerly discharged by three specially appointed clerks called circuit clerks—one for the north, one for the south, and one for the west, circuits. Thereafter it was provided by the Criminal Procedure (Scotland) Act, s. 73, as amended by the Clerks of Session (Scotland) Regulation Act, 1889, s. 10, that on these offices of circuit clerks becoming vacant, they should not be filled up, and that the duties of clerk to the High Court, when sitting elsewhere than in Edinburgh, should be performed by the first assistant clerk of Justiciary and the depute clerks of Session, in rotation as therein provided. This arrangement was found to be unsatisfactory and inconvenient. Accordingly the Circuit Clerks (Scotland) Act, 1898 (61 & 62 Viet. c. 40), repeals the sections of the Acts 1887 and

1889 above referred to, and provides that the duties of clerk of the High Court of Justiciary, when sitting elsewhere than in Edinburgh (the offices of circuit clerks having now ceased by the death of the several occupants), are to be performed by the first and second assistant clerks of Justiciary for the time being, on such terms as shall be fixed by the Treasury. The High Court has power to appoint a clerk or clerks to perform the said duties of clerk at any town or towns, whether circuit towns or not, when the business of the Court requires such appointment to be made, on such terms as may be fixed by the Treasury.

Close Time.—See FISHINGS (XIV. *infra*).

Clubs (VI. 72 and 90).—*The Shop Clubs Act*, 1902 (2 Edw. VII. c. 21), was passed to prohibit compulsory membership of unregistered shop clubs and thrift funds, and to regulate such as are duly registered. It is an offence under the Act if an employer makes it a condition of employment—(a) that any workman shall discontinue his membership of any friendly society, or (b) that any workman shall not become a member of any friendly society other than the shop club or thrift fund (s. 1), or (c) that any workman shall join a shop club or thrift fund, unless the club or fund is registered under the Friendly Societies Act, 1896, subject to the provisions of this Act, and certified under this Act by the Registrar (s. 2). Every person who commits an offence within the meaning of the Act is liable on summary conviction to a fine not exceeding £5; and in the case of a second or subsequent conviction within one year of a previous conviction, to a fine not exceeding £20. Where an offence is committed in respect of several persons at the same time, the offender is not to be convicted of more than one offence (s. 4). No shop club or thrift fund is to be certified unless the Registrar of Friendly Societies is satisfied—(a) that the club or fund is one that affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman; and (b) that the club or fund is of a permanent character, and is not a society that annually or periodically divides its funds, and that no member of such club or fund shall, except in accordance with sec. 6 (*infra*), be required to cease his membership in such club or fund upon leaving the firm with which the club or fund is connected (s. 2). Before so certifying any shop, club, or thrift fund, the registrar shall take steps to ascertain the views of the workmen, and shall be satisfied that at least 75 per cent. of the workmen desire the establishment of such club or fund; and he is to consider any objections which they make to the certification (*ibid.*). The schedule contains regulations which are to apply to any shop, club, or thrift fund certified under the Act (s. 3 and Sched.). Railway superannuation funds, insurances, etc., are exempted from the provisions of the Act (s. 5). Sec. 6 provides that where a workman by the conditions of his employment is a member of a shop club, he shall upon dismissal, or upon leaving his employment, unless contrary to the rules of the club, have the option of remaining a member, or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation. If he remains a member, he is not, so long as he remains out of the employment, entitled to take any part in the management of the club, or to vote in respect thereof.

The joint property of all the individuals of a club cannot be alienated by a majority of the members. A challenge cup was presented for competition between certain clubs, who arranged that it should become the property of the club which should first win it two years in succession. The majority of the members of a club who so won it voted that it should be presented to a particular member of the club, but the Court held that this presentation was ineffectual (*Murray*, 1896, 23 R. 981). Where the action of the committee of a football union results in preventing a player from taking part in the matches between affiliated clubs, he has no claim for damages, apart from defamation, unless he can show patrimonial loss (*Murdison*, 1896, 23 R. 449, 3 S. L. T. No. 152; see also *Robinson*, 1900 (O. H.), 7 S. L. T. No. 356).

Registration of Clubs.—See LICENSING ACTS (XIV. *infra*).

Coal Mines Regulation Acts (III. 67 at p. 70).—As to qualification of managers and undermanagers, the Act 1903, 3 Edw. VII. c. 7, amends 50 & 51 Vict. c. 58, s. 23 (1), by recognising a diploma in scientific and mining training after a course of study of not less than two years at a university, university college, mining school, or other educational institution approved by a Secretary of State; and a degree of a university, to be so approved of, which includes scientific and mining subjects. The holder of the diploma or degree must also have had practical experience in a mine for at least three years. See also CHILDREN (EMPLOYMENT OF) (XIV. *supra*).

Collation.—See LEGITIM (XIV. *infra*).

Colonial Solicitors.—A solicitor of a superior Court in a British possession to which the Colonial Solicitors Act, 1900 (63 Vict. c. 14), applies, and who has been in practice before the Court for not less than three years, may, on giving due notice and the prescribed proof of his qualifications and good character, without examination, and either after service of articles of clerkship or indentures of apprenticeship during the prescribed period (or, in the prescribed cases, without such service), be admitted a solicitor of the Court of Session, on payment of the prescribed amount in respect of stamp duties and fees. Where the King in Council is satisfied, on the report of a Secretary of State, as respects a superior Court in a British possession—(1) that the regulations as to the admission of persons to be solicitors of that superior Court were such as to secure that those solicitors possess proper qualifications and competency; and (2) that by the law of the British possession the solicitors of the Supreme Court (*i.e.* in Scotland, any enrolled law agent under the Law Agents (Scotland) Act, 1873) will be admitted to be solicitors of the superior Court in the possession, on terms as favourable as those on which it is proposed to admit solicitors of that superior Court under the Act to be solicitors of the Supreme Courts in Great Britain, His Majesty in Council may order that the Act shall apply to the said superior Court and British possession.

Colonial Stock Acts (XII. 371).—By the Colonial Stock Act,

1900 (63 & 64 Vict. c. 62), it is not necessary, for the purpose of enabling the Colonial Stock Acts, 1877 and 1892, to be applied to stock issued before the passing of the Act, 1900, that any prospectus, notice, stock certificate, coupon, dividend warrant, or other certificate or document issued before the passing of the Act in relation to the stock, should state the particulars required by sec. 19 of the Act 1877 (s. 1).

Power for Trustees to invest in Colonial Stock.—The securities in which a trustee may invest under the powers of the Trusts (Scotland) Amendment Act, 1884, include any Colonial stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by the Act of 1900, and with respect to which there have been observed such conditions (if any) as the Treasury may by order notified in the *London Gazette* prescribe. The restrictions mentioned in sec. 2 (2) of the Trustee Act, 1893, with respect to the stocks therein referred to, apply to Colonial stock (s. 2). The Treasury is to keep a list of any Colonial stocks in respect of which the provisions of the Act are for the time being complied with, and the list is to be published in the *London and Edinburgh Gazettes* (*ibid.*).

Common Gable (III. 125).—The owner of a tenement which is separated from an adjoining tenement by a mutual gable may take down his building without being obliged to provide substituted support for the gable (*Stark's Trs.*, 1900, 37 S. L. R. 944; see also *Calder*, 1900 (O. H.), 8 S. L. T. No. 134).

Company.—See JOINT STOCK COMPANY (XIV. *infra*).

Conditio si sine Liberis (III. 171).—The benefit of the *conditio si institutus sine liberis decesserit* does not extend to the children of an illegitimate child. These are regarded as strangers in law (*Farquharson*, 1900, 7 S. L. T. No. 425; see also *Earl of Lauderdale* (*Forbes' Exr.*), 1830, 8 S. 771; *Martin's Trs.*, 1865, 3 M. 326).

Confidential Communications (III. 183).—Letters passing between a society for the protection of trade and one of its members regarding a third party are not confidential, and may be recovered under a diligence by that third party (*Mathieson*, 1897 (O. H.), 5 S. L. T. No. 280). As to the right to compel disclosure of the name of the writer of an anonymous letter in newspaper, see *Smith & Co.* (1897, 24 R. 471; cf. *Cunningham*, 16 R. 383). The Inland Revenue Department is entitled to refuse production of documents communicated to the department by an informer (*Brown and Another*, 1897 (O. H.), 5 S. L. T. No. 191). In an action of damages for breach of promise of marriage, the pursuer is entitled to recover the defender's income-tax returns, partnership contracts, and business books of the firm with which he is connected (*Stroyan*, 1901 (O. H.), 9 S. L. T. No. 202).

Confusio (III. 199).—"Confusio does not operate either payment or discharge. It prevents the possibility of a debt arising. It extinguishes

the *jus crediti*. From the moment that the inconsistent characters of debtor and creditor are combined in the same person, both debtor and creditor cease to exist: there is no longer any debt, or any relation of debtor and creditor at all" (per Lord Kinnear, at p. 631, in *Motherwell*, 1903, 5 F. 619; see also *Blantyre*, 1858, 20 D. 1188).

Congested Districts (Scotland) Act, 1897.—This Act (60 & 61 Vict. c. 53) makes provision for the administration of sums available for the improvement of congested districts in the Highlands and Islands of Scotland.

Contempt of Court (III. 253).—The intimidation of witnesses is contempt of Court (*Forbes*, 1897 (O. H.), 5 S. L. T. No. 253).

Conviction, Previous (III. 279).—In summary procedure before a magistrate, it is competent to prove previous convictions in course of the trial (*Cochrane*, 1900, 2 F. (J.) 52). Sec. 67 of the Criminal Procedure (Scotland) Act, 1887, which provides that previous convictions shall not be referred to in presence of the jury, does not apply to anything that takes place before a jury is empanelled to try the case. A Sheriff-substitute at the second diet upon an indictment charging accused with theft and previous convictions of theft, read, in open Court, and in presence of the jurors on the list of assize, the whole indictment to the accused before calling on him to plead. It was held that this procedure was right, and a suspension on the ground of violation of sec. 67 was refused (*White*, 1901, 4 F. (J.) 3).

Copyright. *In Music* (III. 305).—Powers of seizure of pirated copies of musical works are conferred on Courts of summary jurisdiction by the Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. VII. c. 15). Upon the application of the owner of the copyright in any musical work, the Court, if satisfied by evidence that there is reasonable ground for believing that pirated copies of the work are being "hawked, carried about, sold, or offered for sale," may, by order, authorise a constable to seize such copies without warrant, and to bring them before the Court; and on proof that the copies are pirated may order them to be destroyed, or to be delivered up to the owner, if he applies for delivery (s. 1). If any person hawks, carries about, sells, or offers for sale any pirated copy of a musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright, or of his agent thereto authorised in writing, and at the risk of such owner (s. 2). On seizure, the copies are to be conveyed before a Court of summary jurisdiction, and on proof that they are infringements they are to be forfeited, or destroyed, or otherwise dealt with as the Court may think fit (*ibid.*). The Act defines "musical work" as any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced. "Musical copyright" is defined as the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being, to do, or to authorise another person to do, all or any of the following things in respect of a musical

work :—(1) To make copies by writing or otherwise; (2) to abridge it; or (3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system. "Pirated musical work" means any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copy-right (s. 3).

Councillor of a Burgh (III. 344).—It is not criminal in a town councillor to accept a bribe to use his influence with the licensing magistrates to procure the granting of a licence. Having accepted a bribe, he is under no obligation to repay it in the event of his being thereafter made a licensing magistrate. If, as a magistrate, he vote for the licence he was previously bribed to procure, he is not guilty of any crime (*Dick*, 1901, 3 F. (J.) 59).

See also TOWN COUNCILS ACTS (XIV. *infra*).

County Council (III. 346).—The County Councils (Bills in Parliament) Act, 1903 (3 Edw. vii. c. 9), empowers County Councils to promote Bills in Parliament. Sec. 2 provides that, notwithstanding any provision to the contrary therein contained, the powers conferred on a County Council by sec. 56 of the Local Government Act, 1889, as read with subsec. (1) of sec. 11 of the Private Legislation Procedure Act, 1899, shall be extended so as to authorise such council to promote Provisional Orders or Bills under or in pursuance of the last-mentioned Act, as well as to oppose them.

See also ANCIENT MONUMENTS (XIV. *supra*).

Court Martial (III. 369).—See also *Smith v. The Lord-Advocate* (1897, 5 S. L. T. No. 25 and No. 76, 25 R. 112, 35 S. L. R. 117).

Cremation (XIII. 243, Appendix).—The Legislature has now given its sanction to this mode of disposing of the remains of the dead, and has prescribed regulations for carrying it out. The Cremation Act, 1902 (2 Edw. vii. c. 8), does not apply to Ireland. It applies to Scotland; but it is conceived in terms and provisions applicable specially to England, and which, in some cases, are meaningless in relation to Scotland. The powers of a burial authority to provide and maintain burial grounds or cemeteries, or anything essential, ancillary, or incidental thereto, are extended to and include the provision and maintenance of crematoria (s. 4). In Scotland the burial authority is the parish council or town council of any parish or burgh, as the case may be, vested with the powers and duties conferred by the Burial Grounds Act, 1855 (18 & 19 Vict. c. 58), or any Act amending the same (s. 3). No human remains are to be burned in any such crematorium until the plans and site have been approved by the Local Government Board for Scotland, and until the crematorium has been certified by the burial authority to the Secretary for Scotland to be complete, built in accordance with such plans, and properly equipped for the disposal of human remains by burning (s. 4). No crematorium may be constructed nearer to any dwelling-house than two hundred yards, except with the consent in writing of the owner, lessee, and occupier; nor within fifty yards

of any public highway, nor in the consecrated part (*sic*) of the burial ground of any burial authority (s. 5). A burial authority may accept a donation of land or money for the construction of a crematorium (s. 6). Power is conferred on the Secretary for Scotland to make regulations dealing with crematoria, and as to the registration of the burnings therein, and these are to be laid before both Houses of Parliament (s. 7). The statutory provisions relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in Courts or otherwise, are to apply to the register of burnings; and the Stamp Act, 1891, is to apply to the register as if it were a register of burials (*ibid.*). The burial authority may charge fees according to a table to be approved by the Local Government Board for Scotland (s. 9). These fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, are to be deemed part of the funeral expenses of the deceased (*ibid.*). Sec. 8 prescribes penalties for breach of regulations, making false declarations, etc. Every person who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under the Act, is liable on conviction or indictment to penal servitude for five years (s. 8 (3)).

Criminal Evidence Act, 1898.—See XIII. 210.

Criminal Law Amendment Act, 1885 (III. 376).—It is competent on an indictment for rape to convict of the statutory offence (under s. 4) of having unlawful and carnal knowledge of a girl under the age of thirteen, although the statutory charge is not libelled in the indictment (s. 9) (*H.M. Advocate v. McLaren*, 1897, 2 A. 395, 25 R. (J.) 25, 5 S. L. T. No. 221, 35 S. L. R. 52. Lord McLaren stated that he did not concur in the contrary view of the Lord Justice-Clerk in *H.M. Advocate v. Henderson*, 1888, 2 *White*, 157).

Croft : Crofters' Holdings (Scotland) Acts (III. 393).—The fact that the Crofters' Commission have, in a proceeding before them, held a person to be a "crofter," does not preclude a Court of law from considering whether he is a "crofter" when the question is raised in an action of removing, brought on the averment that, at the date of the Crofters Act, he was not a "crofter" (*Sitwell*, 1899, 1 F. 950, 7 S. L. T. No. 89, 36 S. L. R. 762; see also *Balfour*, 1899 (O. H.), 7 S. L. T. No. 116). The Crofters' Commission is not a Court of law, and the plea *lis alibi pendens* does not apply (*Marquess of Breadalbane*, 1897 (O. H.), 4 S. L. T. No. 118). A croft and a right of ferry held together do not fall under the definition of a "croft" (*ibid.*). The eldest of heirs-portioners is entitled to the succession of a croft (s. 19); and, if she renounce, the right passes to her representatives, not to her sisters (*Balfour*, 1899 (O. H.), No. 116).

Crown.—See DEMISE OF THE CROWN (XIV. *infra*) and INTERNATIONAL PRIVATE LAW (XIV. *infra*).

Curator (to Minor) (IV. 27).—A petition for the appointment of a judicial factor, in room of a factor deceased, ought to pray for the discharge of the late factor; otherwise the expenses of a separate note for this purpose will be found due by the party presenting it (*Dalziel*, 1898 (O. H.), 5 S. L. T. No. 328). A judicial factor petitioning for restriction of the amount of his caution, is not entitled to the expenses of the application out of his ward's estate (*Guillan's Factor*, 1897 (O. H.), 4 S. L. T. No. 448).

See, as to *curator bonis* (to Incapax), JUDICIAL FACTOR (XIV. *infra*).

Custody of Children (IV. 50).—An order by the Lord Ordinary, in terms of the Conjugal Rights (Scotland) Act, 1861, regulating the custody of the pupil children of the marriage, ceases to be operative with regard to each child when it emerges from pupillarity (*Watson*, 1895, 23 R. 219). The Sheriff has no jurisdiction to entertain petitions for the permanent custody of children, or petitions where questions of desertion of the children by the mother are raised in bar of her right to demand their production (*Gillan*, 1898, 1 F. 183, 6 S. L. T. No. 217, 36 S. L. R. 135). Where a widow, shortly before her death, had placed her three pupil children in a Protestant home where they were well cared for, the Court refused (on a petition by their nearest male agnates, who were Roman Catholics) to disturb the arrangements for their upbringing and religion which had been made by their mother, and had continued for three years (*Kincaid*, 1896, 23 R. 676, 3 S. L. T. No. 503, 33 S. L. R. 492). Where a mother petitioned for the custody of her illegitimate child from a person who had with her consent adopted it, the Court ordered her to pay a sum to the adopter for past aliment, but refused to make such a payment a condition of the delivery of the child (*Kerrigan*, 1901, 4 F. 10; see also *Mackellar*, 1898, 25 R. 833, 6 S. L. T. No. 26, 35 S. L. R. 483; *Rintoul*, 1898, 1 F. 22, 6 S. L. T. No. 301, 36 S. L. R. 21; *Hogan*, 1899, 36 S. L. R. 669; *Marchetti*, 1901, 9 S. L. T. No. 27, 38 S. L. R. 696).

Dangerous Performances.—The Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34), as amended by the Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52), provides that any person who shall cause any male young person under the age of sixteen, or any female young person under the age of eighteen years, to take part in any public exhibition or performance whereby, in the opinion of a Court of summary jurisdiction, the life or limbs of such young person shall be endangered, and the parent or guardian, or any person having the custody, of such young person, who shall aid or abet the same, shall severally be guilty of an offence against the Acts, and shall on summary conviction be liable for each offence to a penalty not exceeding £10 (Act 1879, s. 3, Act 1897, s. 1). Where in the course of a public exhibition or performance, which in its nature is dangerous to the life or limb of such young person taking part therein, any accident causing actual bodily harm occurs to any such young person, the employer of such young person shall be liable to be indicted as having committed an assault; and the Court before whom such employer is convicted, on indictment, shall have the power of awarding compensation not exceeding £20, to be paid by such employer to the young person, or to some person named by the Court on behalf of the young person, for the bodily harm so occasioned; provided that no person shall be

punished twice for the same offence (*ibid.*). When a person is charged with an offence against the Acts in respect of a child or young person who in the opinion of the Court trying the case is apparently of the age alleged by the informant (*sic*), the *onus* is on the accused to prove that the young person is not of that age (1879, s. 4). Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution or other proceedings shall be instituted for an offence against the Acts without the consent in writing of the chief officer of police (within the meaning of the Police Act, 1890) of the police area in which the offence is committed (1897, s. 2). Every offence against the Acts, in respect of which the person committing it is liable, as above mentioned, to a penalty not exceeding £10, is to be prosecuted, and the penalty recovered, with costs, in a summary manner, in accordance with the provisions of the Summary Procedure Act, 1864, and of any Act or Acts amending the same (1879, s. 5).

Declinature (IV. 122).—It is doubtful whether a minute by the parties waiving the declinature of judges is competent in a criminal case (*Caledonian Railway Co.*, 1897, 2 Ad. 221, 24 R. (J.) 48, 4 S. L. T. No. 365, 34 S. L. R. 526). A magistrate who is an *ex officio* trustee of a public library is not disqualified from acting as judge in an action at the instance of a public prosecutor against a person accused of wilfully causing damage to the furniture of the library (*Weldridge*, 1897, 2 Ad. 399, 25 R. 27, 5 S. L. T. No. 272, 35 S. L. R. 125).

Deeds, Execution of (IV. 129).—Where a deed, executed notarially, and the notary's docquet are all written on one page, it is not necessary that the notary should subscribe the deed itself; it is sufficient that he subscribed before witnesses the notarial docquet (*Mathieson*, 1899, 1 F. 468, 6 S. L. T. No. 386, 39 S. L. R. 256).

Defamation (IV. 145).—*Privilege*.—In an action of damages for slanderous expressions used during the course of an arbitration, it was held that the occasion having been of a *quasi*-judicial character, malice must go into the issue (*Neill*, 1901, 3 F. 387, 8 S. L. T. No. 301, 38 S. L. R. 286; *Hay*, 1898 (O. H.), 6 S. L. T. No. 67). A judge in the Supreme or Lower Courts has absolute privilege to say whatever he pleases that has a bearing upon the dispute before him (*Primrose*, 1902, 4 F. 783, 10 S. L. T. No. 19, 39 S. L. R. 475). A newspaper is responsible for defamatory matter published as an advertisement (*Morrison*, 1902, 4 F. 654, 9 S. L. T. No. 404, 39 S. L. R. 432; see also *M'Lean*, 1900 (O. H.), 8 S. L. T. No. 31).

Defences (IV. 155).—Where appearance was entered but no defences lodged, and the pursuer enrolled the case for decree in the undefended roll, the defender was allowed to lodge defences at the bar (*London and Midland Bank*, 1898 (O. H.), 6 S. L. T. No. 38). In a divorce action, the Court, on a reclaiming note, after proof had been led before the Lord Ordinary, and decree of divorce granted, allowed defences to be lodged, and remitted to the Lord Ordinary to take further evidence (*Cathcart*, 1899, 1 F. 781, 7 S. L. T. No. 4, 36 S. L. R. 596).

Demise of the Crown (IV. 193).—The Demise of the Crown Act, 1901 (1 Edw. VII. c. 5), enacts that the holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown. The enactment takes effect from the last demise of the Crown.

Deposition or Deposit (IV. 199).—Deposit of a sum of money *custodiæ causa* is not a "bargain concerning moveables or sums of money" in the sense of the Act 1669, c. 9, and the quinquennial prescription does not apply (*Taylor*, 1901, 4 F. 79).

Designs.—See PATENT (XIV. *infra*).

Diseases of Animals Act, 1903 (see III. 243).—The Act 3 Edw. VII. c. 43, provides for the compulsory adoption of remedies for sheep scab, etc. Sec. 22 of the Diseases of Animals Act, 1894 (which empowers the Board of Agriculture to make orders for the better prevention of disease among animals, and to authorise local authorities to make regulations for that purpose), is to be construed as if the following paragraph were inserted therein: "(xiii. *a*) For prescribing, regulating, and securing the periodical treatment of all sheep by effective dipping, or by the use of some other remedy for sheep scab" (s. 1). Power is given to an inspector of the Board of Agriculture to enter any premises and examine the sheep there (s. 2), and to the local authority to provide facilities for sheep dipping (s. 3).

District Committee (IV. 302).—It is within the powers of a district committee, on a requisition by at least ten parish electors, to form a parish, or portion thereof, into a special scavenging district, by putting into operation sec. 44 of the Local Government Act, 1894; but, if they desire to have a title to "the dust, night-soil, etc.," which formerly belonged to the inhabitants of the district, they must be careful to adopt in terms sec. 107 of the Burgh Police Act, 1892 (*Hill*, 1899, 2 Ad. 666, 1 F. (J.) 42, 6 S. L. T. No. 371, 36 S. L. R. 317).

Disorderly House (IV. 251).—See also IMMORAL TRAFFIC (SCOTLAND) ACT, 1902 (XIV. *infra*).

Divorce (IV. 307).—*Adultery*.—Delay, even although the spouse has suspicions, is no bar to bringing an action of divorce for adultery (*Gatchell*, 1898 (O. H.), 6 S. L. T. No. 279—a delay of over seven years; see also *Robertson*, 1901 (O. H.), 9 S. L. T. No. 277). Where a domiciled Scotsman has committed adultery, he cannot deprive his wife of her right of action of divorce by subsequently changing his domicile (*Sutherland*, 1899, 6 S. L. T. No. 445). Conviction for rape, along with letters from the criminal in which he referred to his imprisonment without denying his guilt, was held sufficient

ground for divorce for adultery (*Galbraith*, 1902 (O. H.), 9 S. L. T. No. 291).

Desertion.—An attempt, *in bonâ fide*, by a husband to have his wife shut up in a lunatic asylum does not justify her in refusing to cohabit with him, and is no defence to an action of divorce for desertion at his instance (*Cathcart*, 1900, 2 F. 404, 7 S. L. T. No. 4, 37 S. L. R. 337). A wife cannot sue for divorce on the ground of desertion unless she would be *in titulo* to demand adherence by him (*Hunter*, 1900, 2 F. 771, 7 S. L. T. No. 168, 37 S. L. R. 537).

Donation Mortis Causa (IV. 338).—In order to constitute donation *mortis causâ*, it is essential that the gift be made in expectation of death, and that there be delivery or its equivalent (per Lord Young in *Rose*, 1901, 3 F. 337). In the same case, however, he reserved his judgment on the question whether delivery is essential: "the decisions on the point are not uniform" (p. 341). A lady took a deposit receipt in favour of herself and A. B., or the survivor, the money on deposit being her own property. She left it in charge of A. B.'s mother, in whose custody it still was at the depositor's death. It was held that there was an effectual donation to A. B. of the sum in the receipt (*Lind*, 1900 (O. H.), 8 S. L. T. No. 240).

Drainage.—See BURGH (XIV. *supra*).

Drunkards, Habitual (IV. 359; XIII. 244).—Two amending Acts have been passed dealing with this subject. The Inebriates Act of 1899 (62 & 63 Vict. c. 35) provides that, where by any regulations made in pursuance of sec. 6 of the Act of 1898, a breach of the regulations is made punishable by fine or imprisonment, the breach shall be an offence which may be prosecuted summarily. The Inebriates Amendment (Scotland) Act, 1900 (63 & 64 Vict. c. 28), enacts that every person who in any road, street, or public place, or in any building to which the public have access, commits the offence of behaving, while drunk, in a riotous or disorderly manner, may be prosecuted summarily on a charge under the Act, and shall be liable on conviction to a penalty not exceeding forty shillings, and, failing payment, to imprisonment for a period not exceeding seven days, or, in the discretion of the magistrate, to imprisonment for a period not exceeding seven days. An offence under this provision is to be deemed to be an offence mentioned in the First Schedule to the Inebriates Act, 1898 (s. 2). The Act also repeals sec. 25 (c) of the Act of 1898, and gives power to county councils and town councils, for the purpose of defraying expenditure under the Act of 1898, (1) to impose and levy an assessment in the same manner and subject to the same conditions as the public health general assessment authorised by the Public Health (Scotland) Act, 1897; and (2) to borrow money on the security of the said assessment for the capital purposes of the Act of 1898, in the same manner and subject to the same conditions as for the purposes enumerated in sec. 141 of the Public Health (Scotland) Act, 1897 (s. 1).

See also LICENSING ACTS (XIV. *infra*, at p. 51).

Ecclesiastical Assessments (see IV. 367).—The Ecclesi-

astical Assessments (Scotland) Act, 1900 (63 & 64 Vict. c. 20), provides that, where in any parish it is necessary to impose an ecclesiastical assessment which, according to previous use and wont in the parish, would fall to be imposed according to the valued rent, but which it would be competent to impose according to the real rent, it shall be lawful for any valued heritor to request the clerk to the heritors to summon a meeting of valued rent heritors in the manner prescribed by sec. 22 of the Ecclesiastical Buildings and Glebes (Scotland) Act, 1868; and if at such meeting it is resolved by a majority of not less than two-thirds in value of valued rent heritors, voting personally or by proxy, that the amount shall be imposed according to the valued rent, such assessment shall be imposed according to the *valued* rent, any law to the contrary notwithstanding (s. 1). When it has been resolved to levy an assessment in a parish according to the *real* rent, intimation of the resolution is to be made to the presbytery of the bounds and to the kirk-session; and a scheme showing the heritors proposed to be assessed, and the amount of their respective assessments, is to be made up, which is to be open, free of charge, to the inspection of persons interested (s. 2). Where the assessment is imposed according to *real* rent, lands and heritages occupied solely as the church and accessory buildings or burying-ground attached of any religious body, or as the dwelling-house with offices, or garden or glebe or glebe land attached, of the minister of such church, are exempted (s. 3 (1)). As to deductions, see sec. 3 (2).

Education (IV. 368).—In regard to the additional grant to school boards, the Education (Scotland) Act, 1897 (60 & 61 Vict. c. 61, s. 1), alters the limit of 7s. 6d. under sec. 67 of the Act of 1872 (see *Scottish Education Department*, 1902, 4 F. 587). The Act (s. 2) provides for an aid grant of 3s. per child to voluntary schools (*i.e.* State-aided day-schools not provided by a school board); and (s. 3) it exempts voluntary schools from school rates.

The Education (Scotland) Act, 1901 (1 Edw. VII. c. 9), further regulates the employment and attendance of children at school. The principle is laid down that—"It shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and fourteen years of age" (s. 1). It is not lawful for any person to take into his employment (1) a child under the age of 12; or (2) a child between the ages of 12 and 14 who has not obtained exemption from the obligation to attend school from the school board of the district (in the manner provided by sec. 3 of the Act) (s. 2). A child (1) who is under 12, or (2) who, being between 12 and 14, has not obtained exemption as above stated, is not to be employed in any casual employment (as defined by sec. 6 of the Education (Scotland) Act, 1878) after nine o'clock at night from 1st April to 1st October, or after seven o'clock at night from 1st October to 1st April (*ibid.*). There is a saving in the case of children lawfully employed at the commencement of the Act. The Act repeals secs. 69 and 73 of the Act of 1872; secs. 5, 6 (partly), and 7 (partly) of the Act of 1878; and secs. 4, 6, 7, and 8 of the Act of 1883.

As to the intervention of school boards in petitions to the Court for approval of educational schemes, and as to examples of cases where such intervention was held *intra vires* and *ultra vires* respectively, see *Largs Kirk-Session* (1899, 1 F. 915; and *Fraser*, 1901 (O. H.), 9 S. L. T. No. 233).

An action by persons describing themselves as "parents" of hundreds

of children whom they cared for in connection with orphan homes, against the school board of the district to have them ordered to provide sufficient accommodation for the education of the children, was dismissed as irrelevant (*MacFadzean and Others*, 1902, 5 F. 600, 10 S. L. T. No. 450).

A school board is not bound to supply books for the use of children attending the school, nor is it bound to admit to the school a scholar presenting himself unprovided with such books as are necessary for his efficient education (*Haddow*, 1898, 25 R. 988, 6 S. L. T. No. 72, 35 S. L. R. 736). But school boards which accept the Government grant (which precludes them from charging their scholars "fees"), can make no claim against them for the cost of books, etc.; and they can make no such claim under the Factory and Workshops Act, 1878, against employers of scholars as "half-timers" (*Dundee School Board*, 1899, 1 F. 909, 7 S. L. T. No. 58, 36 S. L. R. 718).

See also REFORMATORY SCHOOLS (XIV. *infra*).

Election, or Approbate and Reprobate (IV. 386).—

A *curator bonis* is entitled to elect, on behalf of his insane ward, between legitim and a conventional provision, where it appears that the election is made in the interest of the ward, and that there is no probability of his ever being restored to sound mind (*McCall's Trs.*, 1901, 8 S. L. T. No. 236, 38 S. L. T. 778). (See also *Duncan's Trs.*, 1901, 3 F. 533, 8 S. L. T. No. 358, 38 S. L. R. 401; *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140; and (equitable compensation) *Cattanach's Trs.*, 1901, 4 F. 205, 9 S. L. T. No. 247, 39 S. L. R. 154; *Lee's Trs.*, 1897 (O. H.), 4 S. L. T. No. 325.)

Electric Lighting (V. 19).—The Electric Lighting (Scotland) Act, 1902 (2 Edw. VII. c. 35), dealing only with loans borrowed after its date, enacts that the amount which a local authority (within the meaning of the schedule to the Act of 1890) may borrow under sec. 8 of the Act of 1882, shall not be subject to any limit imposed on the amount which such local authority may borrow for the purposes of its gas undertaking; provided that every loan so borrowed, with consent of the Secretary for Scotland, after the passing of the Act, shall be repaid by the local authority within a period not exceeding thirty years from the date of borrowing.

Electrical Power on Railways.—See RAILWAYS (ELECTRICAL POWER) ACT, 1903 (XIV. *infra*).

Entail (V. 27).—In estimating the value of expectancies of heirs of entail, the contingent rights of charging the estate with provisions and of disentailing are factors in the calculation (*Bankes*, 1899, 1 F. 1194, 7 S. L. T. No. 165, 38 S. L. R. 936). A petition to fix the utmost amount chargeable on an entailed estate as provisions to wife and children is competent (*Paterson's Tutors*, 1899 (O. H.), 7 S. L. T. 233). An heir of entail in possession may petition under sec. 11 of the Entail Amendment Act, 1868, for authority to charge estate duty and settlement estate duty as a burden upon the entailed estates by granting a bond and disposition in security. He is not, however, entitled to add the expenses either of

ascertaining the amount of these duties or of his petition (*Lawrie*, 1898, 25 R. 636, 5 S. L. T. No. 416, 35 S. L. R. 498).

Evidence (V. 107; XIII. 210).—For observations by the judges of the First Division on the “improper” practice of calling the defender as the first witness for the pursuer in actions of affiliation and aliment, and as to the extent to which, if she does so, she must be held to present him to the Court as a witness of credit, see *McArthur* (1901, 3 F. 1010). With the opinions in that case the judges of the Second Division were unable to agree, and they expressed the view that the pursuer in such actions has a legal right to call the defender as her first witness, and in so doing is not to be held to present him to the Court as a witness of credit (*Darroch*, 1901, 4 F. 396). In proving a loan of money by writ, it is not necessary that the writ should be holograph or tested (by whole Court, *diss.* Lords Young and Adam, in *Paterson*, 1897, 25 R. 144).

See also **LODGING PAPERS** (XIV. *infra*).

Executor (V. 140).—The law relating to executors has been amended in several important respects by the Executors (Scotland) Act, 1900 (63 & 64 Vict. c. 55).

1. *Powers of Executors nominate*.—Unless the contrary be expressly provided in the trust deed, all executors nominate now have the whole powers, privileges, and immunities, and are subject to all the limitations and restrictions, which from time to time gratuitous trustees have, or are subject to, under the Trusts (Scotland) Acts, 1861 to 1893, or this Act, or any Act amending the same, and otherwise under the statute and common law of Scotland (s. 2).

2. *Who may be confirmed Executors nominate*.—Where a testator has not appointed any person to act as his executor, or failing any person so appointed, the testamentary trustees of such testator, original or assumed, or appointed by the Supreme Court (if any), failing whom any general donee or universal legatory or residuary legatee appointed by such testator, are to be held to be his executor nominate, and entitled to confirmation in that character (s. 3).

3. *Powers, etc., of Executors dative where more than one*.—In all cases where confirmation is, or has been, granted in favour of more executors dative than one, the powers conferred by it accrue to the survivors or survivor, and while more than two survive a majority is a quorum, and each is liable only for his own acts and intromissions (s. 4).

4. *Confirmation to contain Inventory*.—All confirmations of personal estate must have embodied therein, or appended thereto, the inventory of estate confirmed, and the forms of confirmation prescribed by the Confirmation of Executors (Scotland) Act, 1858, s. 10, Schedules D and E, are to be amended accordingly, by the insertion of words referring to the inventory as being embodied therein or appended thereto, or words to that effect (s. 5).

5. *Transmission of Trust Funds by Executors of sole or last surviving Trustee*.—When any sole or last surviving trustee or executor nominate has died with any funds in Scotland standing or invested in his name as trustee or executor, confirmation by his executors nominate (if any) to the proper personal estate of such trustee or executor nominate, or the probate granted in England or Ireland to his executors, and produced and certified by the

commissary clerk of Edinburgh, whether granted before or after the passing of this Act, is valid, and available to such executors for recovering such funds, and for assigning and transferring the same to such person or persons as may be legally authorised to continue the administration thereof, or, where no other act of administration remains to be performed, directly to the beneficiaries entitled thereto, or to any person or persons whom the beneficiaries may appoint to receive and discharge, realise and distribute the same, provided always that a note or statement of such funds shall have been appended to any inventory or additional inventory of the personal estate of such deceased trustee or executor nominate given up by his executors nominate in Scotland, and duly confirmed; and "provided further that nothing herein contained shall bind executors of a deceased trustee or executor nominate to make up title to such funds, nor prejudice nor exclude the right of any other person to complete a title to such funds by any proceedings otherwise competent" (s. 6).

6. *Confirmation ad non executa*.—Where any confirmation has become inoperative by the death or incapacity of all the executors in whose favour it has been granted, no title to intromit with the estate confirmed therein shall, otherwise than in the circumstances and to the extent authorised by sec. 5, transmit to the representatives of any such executors, whatever may be the extent of their beneficial interest therein, but it is competent to grant confirmation *ad non executa* to any estate contained in the original confirmation which may remain unuplifted or untransferred to the persons entitled thereto, and such confirmation *ad non executa* shall be granted to the same persons, and according to the same rules, as confirmations *ad omissa* are at present granted, and shall be a sufficient title to continue and complete the administration of the estate contained therein, provided always that nothing contained in the Act shall be held to affect the rights and preferences at present conferred by confirmation on executors creditors (s. 7).

7. *Oaths*.—Oaths and affirmations to inventories of personal estate given up to be recorded in any Sheriff Court, and to revenue statements appended thereto, may be taken before the Sheriff or Sheriff-substitute, or any commissioner appointed by the Sheriff, or before any commissary clerk or his depute, or, where the office of commissary clerk has been abolished, before any Sheriff clerk or his depute, or before any notary public, magistrate, or justice of the peace, in the United Kingdom, and also, if taken in England or Ireland, before any commissioner for oaths appointed by the Courts of these countries, or if taken at any place out of the United Kingdom, before any British consul, or local magistrate, or any notary public practising in such foreign country, or admitted and practising in Great Britain or Ireland (s. 8).

8. *Amendment of Small Estates Acts*.—(1) It is competent for any person entitled to apply for confirmation under the Intestates' Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876, as extended by the Customs and Inland Revenue Act, 1881, s. 34, and the Finance Act, 1894, s. 16, to apply to any officer of inland revenue duly appointed for the purpose, and the said officer shall prepare and fill up the form of inventory and oath or affirmation and revenue statement appended thereto, and shall take the oath of the applicant thereto, and such evidence as he may think sufficient to establish the identity and relationship or title of the applicant and the value of the estate; and where caution is required, shall also prepare and fill up the bond of caution, and on the same being signed, and such attestation of the

sufficiency of the cautioner as he may consider necessary being obtained, and the said inventory and bond (if any) being duly stamped, where stamps are required, the said officer shall transmit the same, along with any testamentary writings that may be exhibited, and the prescribed *ad valorem* fee chargeable on the confirmation, to the clerk of the Court where confirmation falls to be issued. The clerk, if satisfied that the applicant is entitled to confirmation, records the inventory and relative writs (if any), and expedes confirmation and transmits the same, with any writs which may fall to be returned, to the officer for delivery to the applicant (s. 9). The necessary appointments and regulations are to be made by and under the authority of the Commissioners of Inland Revenue (*ibid.*).

Expenses (V. 156).—A husband gave his consent and concurrence to an action by his wife for damages for personal injuries. He appeared as a witness on her behalf at the trial. The jury having returned a verdict for the defender, the Court found the husband and wife jointly and severally liable in expenses (*Maxwell*, 1901, 3 F. 638, 38 S. L. R. 443; *Picken*, 1901, 4 F. 39, 39 S. L. R. 31). As to *modification of expenses* in jury trials where the award of damages is small—as to which the practice is not uniform—see *Casey* (1902, 4 F. 811, 10 S. L. T. No. 56; *Fraser*, 1903, 10 S. L. T. No. 406; *Lafferty*, 3rd June 1903, 11 S. L. T. p. 81; and *Watt*, 11th June 1903 (O. H.), 11 S. L. T. p. 118).

Caution.—The leading principle is that no pursuer is obliged to find caution for expenses on account of deficiency of funds, unless he either has been divested of his estate or is manifestly a mere catspaw (*Porteous*, 1901 (O. H.), 8 S. L. T. No. 340). A pauper in receipt of parochial relief must sue *in forma pauperis*, or find caution for expenses, even in an action for the vindication of his character (*Fraser*, 1901 (O. H.), 9 S. L. T. No. 98; see also *Robertson*, 1898, 25 R. 569, 5 S. L. T. No. 414, 35 S. L. R. 455). A husband against whom decree of *cessio* has been pronounced may sue an action of divorce for adultery against his wife and her alleged paramour without finding caution for expenses (*Derrick*, 1900 (O. H.), 8 S. L. T. No. 247).

Factory and Workshops Acts (V. 212).—The Factory and Workshops Act, 1901 (1 Edw. VII. c. 22), consolidates, and in important particulars amends, the law on this subject. The result is to render no longer complete the statement of the law set out in the fifth volume of the *Encyclopædia*, while the references to sections of statutes which are there given are, of course, superseded.

AMENDMENTS.—The important amendments and extensions introduced by the new Act are these:—1. *Health and Safety.*—The Secretary of State may modify the proportion of cubic space prescribed where a workroom is occupied by night as a sleeping apartment (s. 3); and may direct thermometers to be provided in factories and workshops (s. 6). Sufficient means of ventilation must be provided and maintained (s. 7); and sufficient means of draining the wet off wet floors must be provided (s. 8). Steam-boilers must be properly maintained and periodically examined (s. 11), and their use may be prohibited if dangerous (s. 17). A child may not clean under machinery in motion (s. 13). Means of escape in case of fire must be maintained in repair (s. 14); and district councils (*i.e.* the local authority under the Public Health (Scotland) Act, 1867) may make byelaws as to

means of escape from fire (ss. 15, 159). 2. *Employment and Overtime*.—The period of Saturday employment in textile factories is shortened by one hour (s. 24); while overtime employment of women for press of work is forbidden on Saturdays (s. 49), and of women on perishable articles is reduced from five days a week to three, and from sixty days to fifty in any twelve months (s. 50). 3. *Age and Fitness for Employment*.—Children under the age of twelve may not be employed (s. 62). A qualified certificate of fitness may be granted (s. 64). 4. *Exceptions and Additions*.—The processes of *fish and fruit preserving* are now, with certain exceptions, brought within the Acts (s. 41). The Secretary of State may vary the period of employment of women and young persons employed in *creameries* (s. 42); and may exempt from the Act any factory or workshop working on a Government contract (s. 150). 5. *Dangerous and Unhealthy Industries*.—Employees may not take meals, or remain during meal hours, where there is poisonous dust, or fumes, etc. (s. 75). New procedure is provided for making regulations for dangerous trades (ss. 80 to 85). 6. *Tenement Factories*.—The provision as to the owner being substituted for the occupier now applies to all tenement factories, and is not restricted (s. 87); the whole building is to be deemed one factory or workshop for the purposes of the provisions as to means of escape in case of fire (s. 14); and power is given to occupiers to affix their own notices. 7. *Bakehouses*.—Underground bakehouses must not be used unless certified by the district council (see s. 159) to be suitable (s. 101). 8. *Railway Sidings* used in connection with factories come under the provisions of the Act (s. 106). 9. *Home Work*.—Lists of outworkers are to be sent to the district councils (i.e. the local authority under the Public Health Act) (s. 107). District councils may give notice to occupiers that premises where home work is done are unwholesome (s. 108); and home work is prohibited in any place where there is an infectious disease (s. 110). The Act is applied to domestic factories and workshops where dangerous processes are carried on as though they were ordinary factories or workshops (s. 112). 10. *Notices, Registers, and Returns*.—A new register, called the general register, is to be kept in every factory and workshop (s. 129). The periodical return of persons employed is to be made to the Chief Inspector at times directed by the Secretary of State (s. 130). Every district council (see s. 159) must keep a register of all workshops within the district (s. 131). Medical officers of health must report annually to the district councils, and to the Secretary of State, on the administration of the Act in workshops and workplaces (s. 132). 11. *Education*.—Certificates of proficiency and due attendance are no longer required in Scotland owing to the passing of the Education (Scotland) Act, 1901, which substitutes other provisions for exemption (s. 159). See EDUCATION (XIV. *supra*). 12. *Definitions*.—Electrical stations are non-textile factories (Sched. 6, Part I.). Dry-cleaning, carpet-beating, and bottle-washing works in which power is used are non-textile factories (Sched. 6, Part II.). “Men’s workshops” means workshops conducted on the system of not employing any woman, young person, or child therein (s. 157). The term “domestic factory” is introduced (s. 115), and “continuous employment” is defined (s. 156).

[See Redgrave, *Factory Acts*, 9th edition.]

Fine (V. 329; I. 296).—See IMPRISONMENT (*In Default of Payment of Fines*) (XIV. *infra*).

Fircarms (V. 331).—See PISTOLS ACTS, 1903 (XIV. *infra*).

First Offenders (VI. 2).—See also YOUTHFUL OFFENDERS (XIV. *infra*).

Fishings (VI. 3 and 22).—The Board of Agriculture and Fisheries Act, 1903 (3 Edw. VII. c. 31), transfers to the Board of Agriculture (hereafter to be styled The Board of Agriculture and Fisheries, s. 1 (1)) the powers and duties of the Board of Trade under the following enactments, and under any certificate given or made in pursuance of any of these enactments, and any powers or duties of the Board of Trade, or any officer of the Board, under any local and personal Act which relates solely to the industry of fishing (s. 1 (2)). The enactments, in so far as affecting Scotland, are (Sched.):—33 & 34 Vict. c. 33 (The Salmon Acts Amendment Act, 1870); 40 & 41 Vict. c. 65 (The Fisheries (Dynamite) Act, 1877); 54 & 55 Vict. c. 37 (The Fisheries Act, 1891, Parts III. and IV.); 54 & 55 Vict. c. 37 (The Fisheries Act, 1891, Part II.); 31 & 32 Vict. c. 45 (The Sea Fisheries Act, 1868, Part III.); 32 & 33 Vict. c. 31 (The Oyster and Mussel Fisheries Orders Confirmation Act, 1869 (No. 2)); 38 & 39 Vict. c. 15 (The Sea Fisheries Act, 1875); 40 & 41 Vict. c. 42 (The Fisheries (Oyster, Crab, and Lobster) Act, 1877); 47 & 48 Vict. c. 27 (The Sea Fisheries Act, 1884); 59 & 60 Vict. c. 48 (subsec. 1 of sec. 5 of the Light Railways Act, 1896, so far as it relates to the industry of fishing). Provision is made for carrying out the above transfer of powers.

Where any portion of the seashore proposed to be comprised in an order under Part III. of the Sea Fisheries Act, 1868, is under the management of the Board of Trade, the order is not to be made without consent of that Board, and sec. 46 of that Act is to be construed accordingly (s. 1 (7)). The Merchandise Marks (Prosecutions) Act, 1894, which relates to the undertaking by the Board of Agriculture of prosecutions under the Merchandise Marks Act, 1887, in certain cases, is to apply to the produce of any fishing industry as it applies to agricultural or horticultural produce (s. 1 (8)).

I. *Sea Fishings*.—An attempt to set a trawl-net within the prohibited area is using a mode of fishing in contravention of the Herring Fishery Acts (*Pyper*, 1901, 5 F. 514, 8 S. L. T. No. 399, 38 S. L. R. 369). By force of sec. 3 of the Act of 1890, the net is forfeited *vi statuti* when the offence is committed, and it may be seized prior to trial or conviction (*ibid.*). In the case of *Pyper*, it was held that a fishery officer, who on the instructions of the Fishery Board seized the nets of a trawler whom they had reason to suspect of having been engaged in trawling within the three-mile limit, was not liable in damages, although the trawler had not been trawling within the prohibited area. (The case of *Bell*, 3 M. 1076, was distinguished.) “Net” in sec. 3 of the Act of 1890 includes not merely the netted part of the fishing gear, but also the warp and the otter-boards (*Rankin*, 1901, 4 F. (J.) 5, 9 S. L. T. No. 188, 38 S. L. R. 5; *Pyper*, *ut supra*). It is illegal, by the Herring Fishery Act, 1889, s. 8, for a foreigner to land at a port in Scotland any fish caught by him in contravention of the Statute, although the Statute be not binding on him (per Lord Kyllachy, in *Poll*, 1898 (O. H.), 1 F. 826, 5 S. L. T. No. 219, 35 S. L. R. 637).

Mussels.—Mussel scalps on the foreshore, and in the bed of the estuary

of a public navigable river, belong to the Crown in property, and not in trust for the public (*Parker*, 1902, 4 F. 698).

[*Correction*.—Vol. VI. p. 15, line 39, for “any person who shall sell or,” read “any person who shall buy, sell, or.”]

II. *Fresh-water Fish—Explosives*.—The Fresh-water Fish (Scotland) Act, 1902 (2 Edw. VII. c. 29, s. 3), provides that, any person who uses or attempts to use dynamite or other explosive to catch or destroy fish in any river, water, or loch in Scotland, shall be liable to the like penalties and to the like jurisdiction as if he had committed an offence under the Fisheries (Dynamite) Act, 1877 (40 & 41 Vict. c. 65).

Trout.—The said Fresh-water Fish Act, 1902, introduces a close time for trout. The close time extends from the 15th October till 28th February, both inclusive, during which time it is not lawful to—(a) fish for or take common trout (*salmo jario*) in any river, water, or loch in Scotland, by net, rod, line, or otherwise; or (b) have possession of common trout; or (c) expose common trout for sale. Any person who shall so fish for or take or possess or expose for sale such trout at any time within the said dates shall forfeit and pay a sum not exceeding five pounds for every such offence (s. 1).

The above provision does not apply to the owner, occupier, or lessee of any water where trout are kept in captivity or artificially reared and fed, or to any person employed by them for the rearing or feeding of trout, or to any person to whom such trout may be consigned by them for sale or otherwise for the purpose of stocking ponds, rivers, or other waters. But any such owner, lessee, occupier, or person who shall, during the close time created by the Act,—(a) take from such water common trout, except for scientific or breeding purposes, or for the purpose of such trout being removed in a living state to other rivers, waters, or lochs; (b) sell or expose for sale dead common trout; or (c) sell or expose for sale live common trout for the purposes of food, shall, on conviction, be deemed to have committed an offence under the section (s. 1).

All persons, being the proprietors of any land through or by which any river or water flows, or on which any loch is wholly or partially situated, or having a right to fish there for trout, or having a written permission from some such proprietors or persons entitled to fish as aforesaid, shall be subject to the penal and other provisions of the Act of the twenty-third and twenty-fourth years of Victoria, chapter forty-five, in respect of fishing for trout by net (except in ponds or lochs all the proprietors of which have agreed to permit such fishing), or by what is known as double rod fishing, or cross line fishing, or set lines, or other fishing, or burning the water, or by striking the fish with any instrument, or by pointing, or by putting into the water lime or any other substance destructive to trout, with intent to destroy the same; and the exceptions in the said Act of such proprietors and others from the penal and other provisions directed against the practices aforesaid are hereby repealed: Provided that it shall still be legal and permissible for such proprietors and others to fish for trout by net in such rivers, waters, or lochs, where such fishing is prosecuted for scientific, breeding, or restocking purposes (s. 2).

It is illegal to fish for salmon in the river Tay with (1) “drift or hang” nets, or with (2) “toot and haul” nets (*Duke of Atholl v. Glovers’ Incorporation of Perth: Duke of Atholl v. Wedderburn*, 1900 (H. L.), 2 F. 57, 8 S. L. T. Nos. 71, 72, 37 S. L. R. 686). Under sec. 18 of the Salmon

Fisheries Act, 1868, the offence is the being found in possession of salmon roe in any place and under any circumstances, unless the accused can prove that he was in possession of roe for purposes of artificial propagation or scientific inquiry; and it is not necessary to libel the purpose for which the accused was in possession of the roe (*Crook*, 1899 (J.), 2 Ad. 658, 1 F. 50, 6 S. L. T. No. 367, 36 S. L. R. 322). As to the joint rights of proprietors of trout fishing in a loch, see *Menzies*, 1901, 9 S. L. T. No. 91, 38 S. L. T. 672.

Fixtures (VI. 26).—*Machinery*.—The Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. VII. c. 25), further defines the words “machinery, fixed or attached” in sec. 42 of the Valuation Act, 1854 (17 & 18 Vict. c. 91), by providing “that in any building occupied for any trade, business, or manufacturing process, the expression ‘machinery, fixed or attached’ shall be construed as including all machinery, machines, or plant in or on the lands or heritages for producing or transmitting, first, motive power, or for heating or lighting such buildings; but, save as herein provided, shall not include machines, tools, or appliances which are only so fixed that they can be removed from their place without necessitating the removal of any part of the building.”

Food and Drugs.—See SALE OF FOOD AND DRUGS ACTS (XIV. *infra*).

Franchise (VI. 46).—The valuation roll is conclusive evidence of the clear yearly value of a house in respect of occupancy of which a vote is claimed (*Harkness*, 1899, 2 F. 268, 37 S. L. R. 187).

Disqualification.—A person who has been appointed honorary Sheriff-substitute of a county, is entitled to remain on the roll of parliamentary voters for the county; but it has not been decided whether he is entitled to vote (*Wright*, 1898, 1 F. 209, 6 S. L. T. No. 299, 36 S. L. R. 186).

Service Franchise.—A constable who resides in barracks where he has a separate room is an inhabitant occupier in sense of the Statute (*Wallace*, 1897, 24 R. 382, 4 S. L. T. No. 360, 34 S. L. R. 326); but a coachman, who occupies a house over the stables, but who sleeps and takes his meals in the mansion house, is not (*Campbell*, 1895, 23 R. 118, 3 S. L. T. No. 269, 33 S. L. R. 121).

Lodger.—Occupation of rooms from Friday night until Monday morning every week during the year does not constitute residence entitling an applicant to a lodger's vote, although he pays for the rooms and these lie empty for his use during the rest of the week (*Miller*, 1899, 2 F. 265, 37 S. L. T. 185). The lodgings in respect of which a lodger claims to be put upon the roll of voters for any parliamentary division of a burgh must (if the claimant occupies several different lodgings during the qualifying period) be all situated within that division (*Brown*, 1898, 1 F. 206, 6 S. L. T. No. 298, 36 S. L. R. 184). A lodger is “sole tenant” of his lodgings although his wife resides with him (*Hamilton*, 1898, 1 F. 208, 6 S. L. T. No. 300, 36 S. L. R. 186). [As to lodger franchise, see also *Ross*, 1897, 25 R. 98, 5 S. L. T. No. 286, 35 S. L. R. 98; *Kellie*, 1897, 24 R. 379, 4 S. L. T. No. 362, 34 S. L. R. 329; *Flynn*, 1899, 2 F. 269, 37 S. L. R. 187; *Hamilton*, 1897, 1 F. 208, 5 S. L. T. No. 287, 35 S. L. R. 107; *Green*, 1901, 4 F. 245, 39 S. L. R. 186.]

Friendly Societies.—See also CLUBS (XIV. *supra*). *Borrowing.*—The Societies' Borrowing Powers Act, 1898 (61 & 62 Vict. c. 15), gives power to a "society" to provide by rule that it may receive deposits and borrow money at interest from its members, or from other persons. The rule on being registered is valid. "Society" means a specially authorised society registered, or seeking registration, under the Friendly Societies Act, 1896, having for its object the creation of funds to be lent out to the members of the society or for their benefit, and having in its rules provisions (a) that no part of its funds shall be divided by way of profit, bonus, dividend, or otherwise among its members; and (b) that all money lent to members shall be applied to such purpose as the society or its committee of management may approve.

Funeral Expenses (VI. 98).—Under the Cremation Act, 1902 (2 Edw. VII. c. 8, s. 9), the charges and fees paid to the burial authority for the burning of human remains in a crematorium, and any other expenses properly incurred in or in connection with the cremation of a deceased person, are to be deemed to be part of the funeral expenses of the deceased.

Game Laws (VI. 103).—[See also J. H. Tait, *The Game Laws, Trout and Salmon Fishing*, 1901.]

Gaming and Betting (VI. 106).—Neither the Gaming Act, 1845, nor the Gaming Act, 1892, applies to Scotland (*Levy*, 1903, 11 S. L. T. p. 268).

Glebe (VI. 123).—See ECCLESIASTICAL ASSESSMENTS (XIV. *supra*).

Goodwill (VI. 126).—"I do not think it is settled as an abstract proposition that the goodwill of a public-house is wholly heritable. I think its character may depend on circumstances" (per Lord Kincairney, *Leishman*, 1899, 6 S. L. T. No. 406; cp. *Town and County Bank*, 1902, 9 S. L. T. No. 408). Where a person has sold the goodwill of a business, he is not entitled thereafter to canvass former customers in the interests of a business of a similar kind (*Dumbarton Steamboat Company*, 1899, 1 F. 993, 7 S. L. T. No. 106, 36 S. L. R. 771).

Gun Licence.—Rabbits are not vermin within the meaning of sec. 7 of the Gun Licence Act (*Lord-Adv. v. Young*, 1898, 25 R. 778, 5 S. L. T. No. 464, 35 S. L. R. 589).

Hawking.—See HUNTING AND HAWKING (XIV. *infra*).

Heritable and Moveable (VI. 180).—The goodwill of a public-house is not necessarily wholly heritable. Its character may depend on circumstances (Lord Kincairney in *Leishman*, 1899, 6 S. L. T. No. 406).

Heritors (VI. 195).—A corporation which have an exclusive and perpetual right of wayleave for a track of water-pipes through lands situate in a parish, are heritors in the parish and liable to assessment for the upkeep of the church and manse. The assessment is to be calculated on the real rental appearing in the valuation roll (*Strathblane Heritors*, 1899, 1 F. 523, 36 S. L. R. 437). A kirk-session is entitled to lay an assessment on a seat-holder in respect of seats which are not let; and the Statute 33 & 34 Vict. c. 87, s. 29, does not confine them to forfeiture for the enforcement of their power of assessment (*Montrose Kirk-Session*, 1898 (O. H.), 6 S. L. T. No. 125). See also ECCLESIASTICAL ASSESSMENTS (XIV. *supra*).

[Duncan, *Parochial Ecclesiastical Law*, 3rd ed. (by C. N. Johnston, K.C.), 1902.]

Hiring (VI. 199).—*Locatio Operis: Duration of Contract*.—An employer, bound by contract to give three months' notice to his servant, cannot terminate the contract by giving up the business in which the servant is engaged (*Wilson*, 1900 (O. H.), 8 S. L. T. No. 10). A winding-up order or a resolution to wind up constitutes notice of discharge to all the servants of a company in liquidation (*Chapman*, 1866, L. R. 1 Eq. 346). The effect is that this "entitles the servants to damages as for wrongful dismissal" on the day on which the liquidation commences (*Lindley, Companies Acts*, 730). They are free to leave the service at once and to claim damages, on which they will only receive the same dividend as other creditors, because the Preferential Payments Act, 1888, does not cover such a case. Where, however, the liquidators have continued to carry on the business of the company for a time, and employees have continued in the service until the concern is sold, the employees are entitled to notice in accordance with their original agreement, or to wages appropriate to the duration of the stipulated notice (*Day*, 1900 (O. H.), 8 S. L. T. No. 30).

Housing of the Working Classes (VI. 235).—The Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), empowers local authorities to advance money to a resident in any house within their area for the purpose of enabling him to acquire the ownership of that house. The advance is not to exceed four-fifths of what, in the opinion of the local authority, is the market value of the ownership, nor £240, or, in the case of a fee-simple or leasehold, of not less than ninety-nine years unexpired at the date of purchase, £300. An advance is not to be made where the market value of the house exceeds £400. An advance is to be repaid, with interest, within such period not exceeding thirty years as may be agreed upon (s. 1). In Scotland the local authority for the purpose of the Act is, (a) in counties including the burghs (as defined by the Burgh Police Act, 1892) situated therein and having a population of less than seven thousand according to the census last taken, the county council; and (b) in other burghs, the town council or commissioners of the burgh (s. 12).

Hunting and Hawking.—The Act 1621, c. 31, is not in desuetude (see *Trotter*, 8 July 1809, F. C.: *Oliphant and Others* (Sheriff Court of Perthshire), 10 S. L. T. No. 360, and authorities there cited). The Statute enacts that no man can hunt or hawk hereafter who hath not a plough

of land in heritage, under a penalty of £100, the one-half to the King, the other half to the informer (see Kames, *Abridgment*, 125; Barclay's *Digest* (Chisholm), p. 330).

Immoral Traffic (Scotland) Act, 1932 (2 Edw. VII. c. 11).—This short Act has been passed to make provision for the punishment of persons trading in prostitution in Scotland. Every male person who knowingly lives wholly or in part on the earnings of prostitution, or in any public place persistently solicits or importunes for immoral purposes, is liable, on conviction before a summary Court, to be imprisoned for any term not exceeding three months with hard labour. Where a male person is proved to live with or to be habitually in the company of a prostitute, and has no visible means of subsistence, he shall, unless he can satisfy the Court to the contrary, be deemed to be knowingly living on the earnings of prostitution. If it is made to appear to a Court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the Court may issue a warrant authorising any constable to enter and search the house and to arrest that male person. See also DISORDERLY HOUSE (IV. 251); CRIMINAL LAW AMENDMENT ACT (III. 376).

Imprisonment (*In Default of Payment of Fines*).—The Fine or Imprisonment Act, 1899 (62 & 63 Vict. c. 11), assimilates the law of Scotland to that of England as to imprisonment in default of payment of fines. "Where a person is committed to prison for non-payment of a sum adjudged to be paid by the conviction of any Court of summary jurisdiction, then, on payment to the governor of the prison, under conditions prescribed by prison rules, of any sum in part satisfaction of the sum so adjudged to be paid, and of any charges for which the prisoner is liable, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable" (s. 1).

Improvement of Lands Act, 1899.—This Act (62 & 63 Vict. c. 46) extends to Scotland so much of the following enactments as make additions to the improvements authorised by sec. 9 of the principal Act (27 & 28 Vict. c. 114), viz. Limited Owners' Residences Acts, 1870, 1871; Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877; Settled Land Acts, 1882, 1890; and Housing of the Working Classes Act, 1890.

Income Tax (VI. 261).—If a person fails to make a "true and correct statement," as required by sec. 52 of the Act of 1842, he is liable in a penalty, as imposed by sec. 55 of that Act (*Sawers*, 1897, 25 R. 242, 5 S. L. T. No. 279, 35 S. L. R. 190). It is competent for the revenue authorities to prosecute in the High Court in such a case without having first taken proceedings against him before the Income Tax Commissioners

(*ibid.*). Where the interest on money invested in the Colonies is not brought home, but reinvested there, it is not constructively remitted so as to be chargeable with income tax by being entered in the owner's accounts (*Scottish Provident Institution*, 1895, 23 R. 322, 3 S. L. T. No. 349, 33 S. L. R. 228; *Standard Life Assurance Co.*, 1901, 9 S. L. T. No. 59; cp. *Scottish Provident Institution*, 1903 (H. L.), 11 S. L. T. p. 2).

Inebriates.—See HABITUAL DRUNKARDS (XIV. *supra*).

International Private Law (VII. 43).—An alien is allowed by custom to sue in British Courts actions against private individuals; but he cannot sue the State, or the Head of the State. It is within the prerogative of the Crown arbitrarily to exclude foreigners from its territory. If a foreigner so excluded thinks himself wronged, he must seek redress through the channels of diplomacy; he cannot appeal to the municipal Courts against the Crown's prerogative (*Poll*, 1898 (O. H.), 1 F. 823, 5 S. L. T. No. 219, 35 S. L. R. 637).

Intoxicating Liquors (Sale to Children).—The Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. VII. c. 27), makes it illegal to sell liquors to children. Sec. 2 enacts that "Every holder of a licence who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, shall be liable to a penalty not exceeding forty shillings for the first offence, and not exceeding five pounds for any subsequent offence; and every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold, or delivered, or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties." The expression "corked" means closed with a plug or stopper, whether it is made of cork, wood, glass, or other material; "sealed" means secured with any substance without the destruction of which the cork, plug, or stopper cannot be withdrawn (s. 5). There is a saving for the employment by licensees of any member of their family, servant, or apprentice to deliver intoxicating liquors (s. 3). For the purpose of all legal proceedings under the Act, the Act is to be construed as one with the Licensing (Scotland) Acts (s. 4).

Joint Stock Companies (VII. 97).—Since the publication of the article in Volume VII., two statutes have been passed relating to joint stock companies, by the later of which (the Companies Act, 1900, 63 & 64 Vict. c. 48) important alterations on the law were introduced.

The Companies Act, 1898 (61 & 62 Vict. c. 26), empowered the Court to grant relief for non-compliance with sec. 25 of the Act of 1867, which related to the filing of a contract in writing where shares have been issued for a consideration other than cash (see also *Braid Hills Hotel Co.*, 1902,

4 F. 838, 10 S. L. T. No. 42, 39 S. L. R. 607; *Ferguson*, 1901, 4 F. 64, 9 S. L. T. No. 184, 39 S. L. R. 39; *Waddie & Co.*, 1900, 38 S. L. R. 212). Sec. 25 of the Act of 1867 has been repealed by the Act of 1900 (s. 33 and Sched.).

The Companies Act, 1900, enacts the following alterations on the previous law:—

The *certificate of incorporation* is now *conclusive evidence* that all the requisitions of the Acts in respect of registration have been complied with, and that the association is a company authorised to be registered and duly registered under the Acts (s. 1 (1)). The manner in which such certificate may in future be obtained is set forth in the same section. The incorporation is to take effect from the date of incorporation mentioned in the certificate (s. 1 (3)).

Restrictions on the *appointment or advertisement of directors* are imposed by sec. 2. A person cannot be appointed director of a company by the articles of association, or be named as a director or proposed director in any prospectus issued by or on behalf of the company, unless before the registration of the articles or the publication of the prospectus he has by himself, or by his agent authorised in writing—(1) signed and filed with the registrar a consent in writing to act as director, and (2) either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take and pay for his qualification shares (if any). On the application for registration of the memorandum and articles, the applicant must deliver to the registrar a list of those who have consented to be directors; and if this list contains the name of anyone who has not so consented, the applicant is liable to a fine not exceeding £50. Sec. 2 does not apply (1) to a company registered before the commencement of the Act, (2) to a company which does not issue any invitation to the public to subscribe for its shares, or (3) to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which it is entitled to commence business. Where a qualification is required, a director must qualify within two months after his appointment, or such *shorter* time as may be fixed by the regulations of the company; otherwise the office is vacated, and the person is incapable of being reappointed until he has qualified; and, if such unqualified person still acts, he is liable to pay to the company a sum of £5 for every day during which he so acts (s. 3).

Allotment.—Restrictions are imposed on the allotment of shares to the public where sufficient capital has not been subscribed (ss. 4 and 5). No allotment is to be made unless the following conditions have been complied with:—(a) The amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company. The amount so fixed and named and the whole amount aforesaid is to be reckoned exclusively of any amount payable otherwise than in cash. The amount payable on application on each share is not to be less than five per cent. of the nominal amount of the share. If these conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares is to be forthwith repaid to the applicants without interest, and if any such money

is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay that money with interest at the rate of five per cent. from the expiration of the forty-eight days; but a director is not liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of the section is void. The section, except the provision as to the proportion payable on application, does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription (s. 4). An allotment in contravention of these provisions is voidable, at the instance of the applicant, within one month after the holding of the statutory meeting, and it is voidable although the company is being wound up (s. 5). A director who knowingly contravenes or permits or authorises the contravention of any of these provisions as to allotment is liable (on proceedings brought within two years) to compensate the company and the allottee for loss or costs (s. 5 (2)). Sec. 6 imposes restrictions on the commencement of business. A return of allotments is to be filed with the registrar within one month after any allotment, by sec. 7, which takes the place of sec. 25 of the Act of 1867, now repealed. There are to be filed—(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and (b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. A penalty is imposed for failure to comply with this section.

Commissions for underwriting and placing shares are legalised if the payment of the commission and the rate of it are authorised by the articles and disclosed in the prospectus (s. 8).

Prospectus.—Sec. 38 of the Act of 1867 is repealed (s. 33 and Sched.). Every prospectus issued by or on behalf of a company, or in relation to any intended company, must be dated, and that date, unless the contrary is proved, is to be taken as the date of the publication of the prospectus (s. 9 (1)). A copy must be signed by every person named therein as a director or proposed director, or by his agent authorised in writing, and must be filed with the registrar on or before the date of its publication. A prospectus cannot be registered until it is so dated and signed; it cannot be issued until it is filed for registration, and it must state "on the face of it" that it has been filed (s. 9 (2) (3)). The statements required in a prospectus are specified in sec. 10. Prior to the statutory meeting a company may not vary the terms of any contract referred to in the prospectus, except subject to the approval of the statutory meeting.

Statutory Meeting.—Sec. 39 of the Act of 1867 is repealed (s. 33 and Sched.). Every company limited by shares and registered after 1st January 1901 must, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of the members, to be called "the statutory meeting" (s. 12 (1)). At least seven days before the date of meeting, the directors must forward to every member a report certified by not fewer than two

directors (or where there are not two, by the sole director and manager), stating the total number of shares allotted, and the other particulars detailed in sec. 12; and this report must be filed with the registrar. The procedure as to resolutions, adjournments, etc., at the meeting is regulated by sec. 12. Provision is made for the holding of an *extraordinary general meeting* on requisition of holders of not less than one-tenth of the issued capital (s. 13).

Mortgages and charges are regulated by secs. 14–18.

The *annual summary* required by sec. 26 of the Act of 1862 to be sent to the registrar is now to be fuller, and must be signed by the manager or secretary (s. 19). Secs. 45 and 46 of the Act of 1862 (requiring a company to keep at its office a register of the names, addresses, and occupations of its directors and managers, to send a copy thereof to the registrar, and to notify changes) are applied to companies having a capital divided into shares (s. 20).

The appointment (s. 21), remuneration (s. 22), and rights and duties of *auditors* (s. 23) are regulated, in the manner at present laid down in the articles of association of most companies.

Winding-up.—The provisions of sec. 2 of the Joint Stock Companies' Arrangement Act, 1870, are extended to *members*; members of a company in course of being wound up are now to have the powers conferred on creditors by that Act (s. 24); and in a voluntary winding-up a creditor of the company has the power, under sec. 138 of the Act of 1862, formerly possessed only by the liquidator and the contributors, of applying to the Court to determine any question arising in the liquidation (s. 25).

Defunct Companies.—Power is given to the registrar to strike the name of a company in course of liquidation off the register if it appears to be defunct (s. 26). (As to case of restoration by Court of a company so struck off, see *Healy*, 1903, 5 F. 644, 10 S. L. T. No. 437, 40 S. L. R. 454.)

Companies Limited by Guarantee.—A company limited by guarantee cannot have a capital divided into shares unless the memorandum of association so provides and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided. Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests is to be treated, for the purposes of this provision, as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void. These provisions apply only to companies registered after the commencement of the Act (s. 27). Sec. 28 imposes a penalty for *false statements* wilfully made in any return, report, certificate, balance-sheet, or other document required by or for the purposes of the Act.

Conversion of Stock into Shares.—A company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed, or as altered by special resolution in manner provided in the

Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination.

[McNeil, *Manual of Law of Joint Stock Companies in Scotland*, 1901.]

Judicial Factor (VII. 173).—*Curator bonis to Incapax*.—The Court will appoint a *curator bonis* to a person of unsound mind, although he have, while capable, granted a factory and commission for the management of his affairs (*Dick*, 1901 (O. H.), 9 S. L. T. No. 146). The Court will not appoint as *curator bonis* to an incapax a person resident in England, even if he offer to prorogate the jurisdiction of the Scottish Courts, and find cautioners in Scotland (*Napier*, 1902 (O. H.), 9 S. L. T. No. 375). Where objections were lodged to a petition for recall of a curatory, and the petition was accompanied by the certificates of two medical men that the ward was of sound mind, the Court remitted to one of the Commissioners in Lunacy to examine and report (*Fraser*, 1901 (O. H.), 9 S. L. T. No. 232).

Where an English railway company refused to recognise the authority of a *curator bonis* to sell stock of the company belonging to his ward, without express authority of the Court, the Court on petition granted the authority, although the Accountant of Court considered that express power was unnecessary (*McCall's Curator*, 1901 (O. H.), 8 S. L. T. No. 350).

Judicial Separation (VII. 215).—A false charge of criminal immorality, if made by one spouse against another and persisted in, is cruelty and a good ground for decree of separation and aliment, where it results in injury or in reasonable apprehension of injury to the bodily or mental health of the person accused (*Aitchison*, 1902 (O. H.), 10 S. L. T. No. 219). Evidence of acts of cruelty which have been condoned is good evidence to colour later acts, which, although harsh, would not in themselves ground an action of separation and aliment (*Smcaton*, 1900, 2 F. 837, 7 S. L. T. No. 448, 37 S. L. R. 595). Habitual drunkenness is cruelty (3 Edw. VII. c. 25, s. 73).

Jurisdiction (VII. 218).—*Arrestments* do not confer on the Courts jurisdiction to entertain declaratory conclusions (*Williams*, 1897 (O. H.), 5 S. L. T. No. 275); but jurisdiction founded by arrestment extends to the pronouncement of decrees *ad factum præstandum* (*Powell*, 1900 (O. H.), 8 S. L. T. No. 152).

The statutory exclusion of the jurisdiction of the Court of Session in cases having a value of less than £25, is not radical or absolute. It is competent to raise in the Court of Session an action concluding for less than £25 against a foreigner where the sole ground of jurisdiction over him is that he possesses heritable property in Scotland (*Strachan*, 1901 (O. H.), 8 S. L. T. No. 298, per Lord Stormonth Darling; Erskine, i. 2. 8; *McBey*, 1879, 7 R. 255).

The representatives of Englishmen who have been trustees in a Scottish trust are subject to the jurisdiction of the Scottish Courts in an action of accounting raised against them by a judicial factor on the trust estate (*Rintoul*, 1898 (O. H.), 5 S. L. T. No. 382). Where trustees acting under an English trust hold heritable property in Scotland, the Scottish Court has jurisdiction over them, as individuals, to consider questions rising out of trust administration (*Mackay*, 1897 (O. H.), 4 S. L. T. No. 466).

Jury: Jury Trial (VII. 232).—The fact that a juryman was one of 19,060 employees of the defenders was held no sufficient ground for allowing the pursuer a new trial where his employment had no connection with the subject-matter of the litigation, and the parties were agreed that the verdict was just (*Watson*, 1901, 3 F. 342, 8 S. L. T. No. 275, 38 S. L. T. p. 252).

Trial on Record, without issues.—See also *McLaughlan*, 1901, 9 S. L. T. No. 282).

Where, in an action for slander, there was difficulty in adjusting the terms of a counter-issue, so that it should exactly meet the issue, the Court remitted to one of their number to take proof (*McQuillan*, 1902, 9 S. L. T. No. 322).

New Trial.—A third trial refused (*Grant*, 1903, 5 F. 459, 10 S. L. T. No. 458, 40 S. L. R. 365; *McQuillan*, 1902, 4 F. 462, 9 S. L. T. No. 344, 40 S. L. R. 328).

Jus Relictæ: Jus Relicti (VII. 257).—Where a man died leaving moveable estate, and also heritable estate, part of which was burdened by an obligation to erect buildings upon the subjects, it was held that the performance of this burden must be borne by the moveable estate before the *jus relictæ* could be claimed (*Ross's Trs.*, 1901 (O. H.), 9 S. L. T. No. 286). A husband may defeat his wife's claim to *jus relictæ* by giving away his whole estate during life (*Allan*, 1901 (O. H.), 8 S. L. T. No. 370). Where a husband was not a party to the deed, and took no benefit under it, it was held that he was not disentitled to claim *jus relictæ* out of the estate of his deceased wife because she had conveyed her whole estate to trustees by an antenuptial trust-deed, reserving to herself power of disposal (*Lyon's Trs.*, 1903, 11 S. L. T. p. 211, 40 S. L. R. 774). As to the effect of change of domicile on a right to *jus relictæ*, the case of *Manderson* (1899, 1 F. 621, 36 S. L. R. 432) is instructive. There a domiciled Scotsman married in 1873, and continued in Scotland until 1889, when he went to the Isle of Man, and there acquired a new domicile. From 1880 until 1895 he lived in adultery with A. B. In 1898 his wife raised in the Scottish Courts an action of divorce and obtained decree—the Court sustaining its jurisdiction on the ground that, cause of action having arisen while the defender was still in Scotland, he could not deprive his wife of her remedy by changing his domicile. Thereafter the wife raised in the Court of Session an action for teree and *jus relictæ*. Her claim for teree over heritage in Scotland was admitted; but the claim for *jus relictæ* was disputed, on the ground that the succession of the defender fell to be regulated by the laws of the Isle of Man (where he was domiciled), and that these did not recognise *jus relictæ*. The Court found that the pursuer was entitled to *jus relictæ*; apparently on the ground that, having sustained the jurisdiction by pronouncing decree of divorce, it was thereby implied that his domicile for the purposes of the divorce action was Scottish, and that therefore his succession as at the date of the divorce fell to be regulated by the law of Scotland. (Lord Young thought the *forum* not convenient, and dissented.)

Justice of the Peace (VII. 263).—An *ex officio* justice of the peace in Scotland, who has been re-elected to the office in respect of which he became a justice on the expiration or other determination of a previous

term of office, and who has taken the oaths required by law, may continue to act as a justice without again taking such oaths (61 & 62 Viet. c. 20, s. 1).

Justiciary, Circuit Clerks of.—See CIRCUIT CLERKS OF JUSTICIARY (XIV. *supra*).

Juvenile Offenders.—See YOUTHFUL OFFENDERS (XIV. *infra*).

Law Agent (VII. 307).—*Women* cannot under the existing statutes practise as law agents in Scotland (*Hull*, 1901, 1 F. 1059, 9 S. L. T. No. 130, 38 S. L. R. 776). The title of a person who is not a law agent or a member of any Law Agents' Society to petition for removal of a law agent's name from the roll, was discussed by the judges in *A. B. petitioner* (1899, 2 F. 67, 7 S. L. T. No. 200, 37 S. L. R. 52). When a relevant petition is put forward by a private person having a title, the first step is to intimate the petition to the professional body of which the respondent is a member (*ibid.*).

Legitim (VIII. 27).—*Collation.*—The plea of collation *inter liberos*, in answer to a claim for legitim, can only be maintained by a party entitled to share in the legitim; not, *e.g.*, by trustees representing the interest of the residuary legatee (*Collins*, 1898 (O. H.), 5 S. L. T. No. 330, 33 S. L. R. 641, where the authorities are marshalled by Lord Stormonth Darling). An eldest son, who had sold part of the heritable estates of his deceased father, was held barred from claiming a share in the legitim fund, as he had made it impossible for himself to collate (*McCall's Trs.*, 1901, 3 F. 1065, 38 S. L. R. 778).

Libraries, Public (VIII. 44).—Where the Public Libraries Consolidation Act, 1887, has been adopted for any two or more neighbouring burghs or parishes, the magistrates or councils or boards of each such burgh or parish may, by agreement, combine for any period in carrying the Act into execution (Public Libraries Act, 1899, 62 & 63 Viet. c. 5, s. 1). The expenses are to be defrayed by such burgh or parish in such proportions as may be provided by the agreement (*ibid.*). In case of such agreement to combine, the committee to be appointed in pursuance of the Act of 1887 is to be appointed by each burgh or parish in the proportion provided by the agreement (*ibid.*, s. 2).

Licensing (Scotland) Acts (VIII. 50).—The law relating to licensing in Scotland, as stated in Volume VIII., has been consolidated, and in several important matters amended, by the Licensing (Scotland) Act, 1903 (3 Edw. VII. c. 25). The most important alterations of the law are in relation to the constitution of Licensing and Appeal Courts and to the registration of clubs. The provisions in Part I. and Part II. of the statute, which respectively deal with these two subjects, are new; the other parts consolidate the existing law, but with important amendments, and the introduction of several new provisions.

Licensing and Appeal Courts.

Licensing Courts.—(1) *Burghs.*—For each burgh being a county of a city, and for each royal, parliamentary, or police burgh containing a population of or exceeding 7000, and for each burgh containing a population under 7000, but of or exceeding 4000, the magistrates of which have power to grant certificates under the existing Acts, there is a separate Licensing Court, consisting of the magistrates of such burgh for the time being (s. 2). (2) *Counties.*—The County Council of every county are to determine in their discretion whether the county shall be divided into districts for the purposes of the Act (called licensing districts). Where these districts are not local government districts, the consent of the Secretary for Scotland is required. Burghs which have not separate Licensing Courts, as above, form part of the county and of the local government or licensing district, if any, within which they are situated. For each county, or, where a county is divided into licensing districts, for each licensing district, there is a separate Licensing Court. One-half of the members of this Court are elected by the justices of the peace for the county from their own number, and one-half by the County Council from their own number. The number of members of the Court are in accordance with this scale of population, viz.:—Population under 25,000, eight members; between 25,000 and 50,000, twelve members; between 50,000 and 100,000, fourteen members; 100,000 or over, eighteen members (s. 3 and Sched. I.). Where, however, a burgh the magistrates of which have power to grant certificates under the existing Acts forms part of a county or licensing district under the Act, the Licensing Court for the county or district is to be modified by the addition thereto of such number of members for every such burgh as the Secretary for Scotland may determine by order under his hand, so that one member at least shall be added for every such burgh, and that the number of members for each burgh shall, as nearly as may be, bear the same proportion to the number of the Court without such addition as the population of the burgh bears to that of the county or district, “excluding every such burgh” (s. 3 (4)). The added members must be magistrates of the respective burghs, and the total number of members for a burgh must not exceed the number of its magistrates (*ibid.*).

Courts of Appeal: Burghs and Counties.—For the purpose of hearing appeals and applications for confirmation of new certificates under the Act, a Court (called “the Court of Appeal”) is constituted, one-half of the members of which are elected by the justices of the peace from their own number, and one-half are burgh magistrates or county councillors respectively: thus—“(2) Except as hereinafter provided, the Court of Appeal from a *Burgh Licensing Court* shall be—(a) for each burgh being a county of a city, a separate Court consisting of the members of the Licensing Court and of an equal number of justices of the peace for the county of a city; and (b) for each royal, parliamentary, or police burgh (not being a county of a city) containing a population of or exceeding twenty thousand, a separate Court consisting of the members of the Licensing Court and of an equal number of justices of the peace for the county within which the burgh is situate; and (c) in each county, for all the royal, parliamentary, and police burghs situate therein containing a population of or exceeding seven thousand and under twenty thousand, one and the same Court, consisting of burgh magistrates and justices of the peace for the county as specified in the Second Schedule annexed hereto.

“(3) The Court of Appeal (*a*) from a *County Licensing Court*, or if the county is divided into licensing districts from the several District Licensing Courts, and (*b*) from any *Burgh Licensing Court* for a burgh situate within the county which is not specified in the immediately preceding subsection, shall for each county be one and the same Court, whereof one-half of the members shall be county councillors for the county elected as hereinafter provided, and one-half shall be justices of the peace for the county; and the number of members shall be such that the Court shall contain three more county councillors and three more justices of the peace than the *County Licensing Court* or the *Licensing Court* for the most populous licensing district within the county, as the case may be, in accordance with the Third Schedule annexed thereto” (s. 4).

The *term of office* of a justice of peace or county council member of a *Licensing Court* or *Court of Appeal* is three years: they are elected on the third Tuesday of December every third year from 1904 (s. 5).

The members of a *County or District Licensing Court* being magistrates of a burgh, and the members of a *Court of Appeal* from a *Burgh Licensing Court* being magistrates of a burgh containing a population under twenty thousand, are, where necessary, elected by the magistrates of the burgh in each case at a meeting to be summoned by the town clerk, and to be held on any day within fourteen days after the annual election of town councillors in the year one thousand nine hundred and three, and in subsequent years as vacancies occur. The provost, or in his absence the senior bailie present, is chairman of such meeting. Each magistrate being a member of a *County or District Licensing Court* or of a *Court of Appeal* from a *Burgh Licensing Court* holds office so long as he remains a magistrate of the burgh (*ibid.*).

Dates of Meetings.—A *Burgh Licensing Court* meets upon the second Tuesday of April and the third Tuesday in October in each year; and a *County or District Licensing Court* meets on the third Tuesday in April and the last Tuesday in October in each year (s. 6). The transfer of powers and duties and the offices of clerks to Courts and the time and place of meeting are regulated by secs. 7 and 8.

The section (9) as to *disqualification* is as follows:—“No person who is a brewer, maltster, distiller, or dealer in or retailer of exciseable liquors, or who shall be in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of exciseable liquors, shall act as a member of a *Licensing Court* or *Court of Appeal* respectively in the execution of this Act; nor shall any person being a member of a *Licensing Court* or *Court of Appeal* act in the granting of any certificate when he shall be the proprietor or tenant of the house or premises for which such certificate shall be applied; and everything done by such person respectively in any case in which he is so disqualified to act shall be null and void; and every person who shall knowingly or wilfully offend in any of the premises aforesaid shall forfeit and pay the sum of fifty pounds, to be recovered before the Sheriff within six calendar months next after the offence has been committed: Provided that no grant of a new certificate confirmed under the provisions of this Act shall be liable to objection on the ground that the members of the *Licensing Court* or *Court of Appeal* which granted or confirmed the same or any of them were not qualified to make such grant or confirmation, and provided further that a member of a *Licensing Court* or a *Court of Appeal* shall not be disqualified to act for any purpose under this Act by reason only of his being interested in a railway company which is a retailer of exciseable liquor.”

Powers, Duties, and Procedure of Licensing and Appeal Courts.

This branch is dealt with in Part II. of the Act (ss. 11-42). Certificates to sell liquor commence on the 28th May or 28th November, according as they are granted in April or October; and they continue in force until the 28th May following (s. 12). A new certificate (*i.e.* one granted in respect of any premises which are not certificated at the time of application; not certificated premises, rebuilt on destruction by fire, tempest, or other calamity, s. 107) must be confirmed by the Court of Appeal (s. 13). The right of appeal from the Licensing Court to the Court of Appeal is no longer confined to justices and to proprietors or occupiers of the premises, but extends to "*any member of a Licensing Court*" (not to all justices, as formerly), to the proprietor or occupier, and any proprietor or occupier of property in the neighbourhood of the premises who has objected before the Licensing Court to the granting or renewal of the certificate (s. 22). The right of appeal does not apply to the refusal of new certificates (s. 23). As to the *transfer of certificates*, it is provided that—(1) A Licensing Court may at any October half-yearly meeting grant to a new tenant or occupant a transfer of any certificate then subsisting for any house or premises as aforesaid; and (2) if any person holding a certificate for any house or premises as aforesaid shall die before the expiration of his certificate, or in the case of the bankruptcy, insolvency, or incapacity of the holder of such certificate occurring before the expiration of his certificate, it shall be lawful for any two or more of the members of the Licensing Court within whose jurisdiction such house and premises are situated, to grant to the executors, representatives, or disponees of the person so dying, or to the trustee, judicial factor, or *curator bonis* to such holder, and who shall respectively be possessed of such house or premises, a transfer of the certificate for such house or premises to keep and continue the same as before such death, bankruptcy, insolvency, or incapacity until the next general half-yearly meeting of the Licensing Court (s. 31). A Licensing Court has power to prescribe an *hour for closing* licensed premises not earlier than ten, and not later than eleven, o'clock (s. 34, Sched. VI., No. 2). *Special permission* to keep an inn, hotel, or public-house open during particular times (in respect of a public or special entertainment) may be granted by any two members of a Licensing Court within the jurisdiction in which the premises are situated; but it is now necessary for the applicant to serve on the chief constable or superintendent of police notice of intention to apply forty-eight hours at least before so applying (s. 40).

Excise Licences.

These are regulated in Part III. of the Statute (ss. 43-51).

Offences and Penalties.

The provisions as to offences and penalties are contained in Part IV. (ss. 52-76). The subjects of the sections are these:—52. Sale to be by standard measure. 53. Penalties for breach of certificate. 54. What shall be deemed second and third offences. 55. Saving sales on order by certain officials. 56. Saving for sales at railway stations. 57. Exciseable liquors when to be deemed to have been drunk on the premises. 58. Sale of spirits to children under sixteen illegal. 59. Sale of exciseable liquors to children under fourteen illegal. 60. Sunday sales to travellers.

61. Penalty on persons falsely representing themselves to be travellers. 62. Harbours constables while on duty, etc. 63. Distribution of liquor from vans. 64. Collection of rates and taxes on licensed premises prohibited. 65. Penalties for trafficking without certificate. 66. Penalty for bartering or selling spirits without certificate. 67. Penalty for hawking exciseable liquors. 68. Penalty on disorderly persons refusing to quit licensed houses. 69. Penalty for inducing grocer to sell exciseable liquors illegally. 70. Penalties for drunkenness, riotous behaviour, and other offences involving drunkenness. 71. Power to require person convicted of drunkenness to find caution. 72. Prohibition of sale of exciseable liquor to persons convicted of drunkenness. 73. Habitual drunkenness equivalent to cruelty in consistorial action. 74. Penalty for procuring drink for drunken person. 75. Penalty on persons found in shebeens drunk or drinking. 76. Penalty for allowing drinking at refreshment house during hours when licensed houses closed.

Registration of Clubs.

The provisions regarding the registration of clubs are contained in Part V. of the Act (ss. 77–90). A register is to be kept by the Sheriff-clerk (“the registrar”), in which is entered the name of each club to which a certificate of registration is granted under the Acts. Registration does not constitute the club licensed premises, or authorise any sale of exciseable liquors therein which would otherwise be illegal (s. 77). Where a club desires a certificate of registration, the secretary must lodge with the registrar an application signed by the chairman, secretary, or authorised law-agent of the club, stating the name and object of the club, and the address of the premises; accompanied by—(1) two copies of the rules; (2) a list containing the names and addresses of the officials and committee of management or governing body, and the names of the members; and (3) a certificate (as nearly as may be in the form of Sched. X.—to the effect that the club is conducted as a *bonâ fide* club, and not mainly for the supply of exciseable liquor) signed by two justices of the peace for the county within which the premises are situate, or, if they are within a burgh, either by two justices or two magistrates, or one justice and one magistrate; and also, where the premises are not owned by the club, signed by the owner of the premises, or, if he is under a legal disability, by his legal representative—except where they are held under a lease entered into not later than Whitsunday 1903 (s. 78). Where a renewal of certificate is desired, the secretary must make application in the same form at a date not later than twenty-one days prior to the expiry of the certificate. The certificate is granted by the Sheriff. Objections may be lodged by the chief officer of police, town council, or parish council, and by “no other person or persons,” on any of the grounds specified in sec. 81 (s. 79 (2)). Where there are objections, the Sheriff hears parties, and grants or refuses the application. He may award expenses (s. 79 (3) (4)). The certificate remains in force for twelve months from the date of issue (*ibid.*). In order that a club may be eligible for registration, the rules of the club must provide:—(a) That the business and affairs of the club shall be under the management of a committee or governing body elected for not less than a year by the general body of members, and subject in whole or in a specified proportion to annual re-election, and that no member of the committee or governing body and no manager or servant employed in the club shall have any personal

interest in the sale of exciseable liquors therein or in the profits arising from such sale; (*b*) that the committee or governing body shall hold periodical meetings; (*c*) that the names and addresses of persons proposed as ordinary members of the club shall be displayed on a conspicuous place in the club premises for at least a week before their election, and that an interval of not less than two weeks shall elapse between nomination and election of ordinary members; (*d*) that all members shall be elected by the whole body of members or by the committee or governing body, with or without specially added members; (*e*) that there shall be a defined subscription payable by members in advance; (*f*) that correct accounts and books shall be kept showing the financial affairs and intrusions of the club; (*g*) that a visitor shall not be supplied with exciseable liquor in the club premises unless on the invitation and in the company of a member, and that the member shall, upon the admission of such visitor to the club premises, or immediately upon his being supplied with such liquor, enter his own name and the name and address of the visitor in a book which shall be kept for the purpose, and which shall show the date of each visit; (*h*) that no exciseable liquors shall be sold or supplied for consumption outside the premises of the club except as hereinafter provided; (*i*) that no persons shall be allowed to become honorary or temporary members of the club, or be relieved of the payment of the regular entrance fee or subscription, except those possessing certain qualifications defined in the rules, and subject to conditions and regulations prescribed therein; (*j*) that no person under eighteen years of age shall be admitted a member of the club unless the club is one primarily devoted to some athletic purpose, and, in the latter case, that no exciseable liquors shall be sold or supplied to any person under eighteen years of age: Provided always that this section shall not apply to any lodge of Freemasons duly constituted under a charter from the Grand Lodge of Scotland, and that subsections (*c*), (*d*), and (*j*) of this section shall not apply to a University Students' Union which is recognised and certified as such to the registrar by the Senatus Academicus of a university (s. 80).

A search warrant to enter a club may be granted by a justice of a county or a magistrate of a burgh, if satisfied by information on oath that there is reasonable ground for supposing that any registered club is so carried on as to constitute a ground of objection to the renewal of its certificate, or that an offence under the Act has been or is being committed; or that any exciseable liquor is sold or supplied or kept for sale or supply on the premises of an unregistered club (s. 82). Penalties are imposed for supplying or keeping liquor in an unregistered club (s. 83); for supplying liquor for consumption outside the premises of a registered club (except to a member on the premises, and for his own consumption) (s. 84); for offences by officials of a registered club (s. 86); and for making an application for registration which is false in any material particular (s. 88). Power is given to the Sheriff to cancel the certificate of registration (s. 85); and the Sheriff's decision is final in dealing with an application for an original certificate, or for the renewal of a certificate, or in cancelling a certificate (s. 86).

Legal Proceedings.

Part VI. contains the provisions regarding legal proceedings under the Act (ss. 91-106).

[Dodds and Macpherson, *Handbook to Licensing Act*, 1903; Purves,

Scottish Licensing Laws, 2nd ed., 1903; Dewar, *Liquor Laws of Scotland*, 4th ed., 1903.]

See also INTOXICATING LIQUORS (SALE TO CHILDREN) ACT (XIV. *supra*).

Lien (VIII. 74).—A law agent's lien does not extend to documents which come into his hands at a time when his client has "acquired the status of notour bankruptcy" (*Jackson*, 1899 (O. H.), 6 S. L. T. No. 391; *Bell*, *Com.* ii. 89). An accountant's lien is special and founded on implied contract; it does not entitle him to retain books against a general account (*Fulwell's Sequestration*, 1901 (O. H.), 9 S. L. T. No. 21). The secretary of a company has no lien over books of the company (coming into his hands as secretary) for money due him by the company (*Barnton Hotel Co.*, 1899, 1 F. 1190, 7 S. L. T. No. 150, 36 S. L. R. 928).

Liferent and Fee (VIII. 112).—A liferent with power of disposal has been held equal to a fee in several recent cases (*Rattray's Trs.*, 1899, F. 510, 36 S. L. R. 338; *Young's Trs.*, 1899 (O. H.), 7 S. L. T. No. 270; *Dacres*, 1898 (O. H.), 6 S. L. T. No. 33; *Thomson*, 1900 (O. H.), 8 S. L. T. No. 190; *Howe's Trs.*, 1903, 11 S. L. T. No. 232. But compare *Reid*, 1899, 1 F. 969, 36 S. L. R. 722; *Miller's Trs.*, 1896, 24 R. 114; *Peden's Trs.*, 1903, 5 F. 1014, 11 S. L. T. p. 186, 40 S. L. R. 741; *Douglas's Trs.*, 1902, 5 F. 69, 10 S. L. T. No. 216, 40 S. L. R. 103). Where a testator directed his trustees to convey a house to A., and by codicil expressed a wish that the house "left to A. should be given after his death to B.," it was held that the request was addressed to the trustees, and converted A.'s original fee into a liferent, the fee going to B. (*Jamieson's Trs.*, 1899, 2 F. 258, 7 S. L. T. No. 222, 37 S. L. R. 194. See also *Miller Richard's Trs.*, 1903, 11 S. L. T. p. 114, 40 S. L. R. 663).

Periodically recurring duplicands of feu-duty go to the liferenter (*Montgomerie*, 1901, 3 F. 591, 38 S. L. R. 217).

Loan (VIII. 126).—See also MONEY-LENDERS (XIV. *infra*).

Lochs (VIII. 137).—If there are more riparian proprietors than one, the entire loch belongs rateably to them all. The *solum* is considered to belong in severalty to the several proprietors, the space enclosed by lines drawn from the boundaries of each property *usque ad medium filum* being deemed appurtenant to the land of the proprietor. Rights of boating, fowling, and fishing are enjoyed over the whole face of the water by all the riparian proprietors in common. No proprietor can complain that the other proprietors do not confine themselves to their own parts of the loch; they have a right to be everywhere, and if one part of the loch affords better fishing than another, every proprietor alike is entitled to have the benefit of that advantage (per I. d. Kinnear in *Menzies*, 1901, 3 F. 941, 9 S. L. T. No. 91, 38 S. L. R. 672; *Bankes*, 5 R. (H. L.) 192).

Locomotives (VIII. 139 and 142).—See MOTOR CARS (XIV. *infra*).

Lodging Papers and Productions (VIII. 153).—In all defended actions, all documents, plans, maps, models, and other productions which are intended to be used or put in evidence at the proof must be lodged, according to inventory, with the clerk of Court at his office in the Register House, on or before the fourth day prior to the date appointed for the proof, notice of the lodging being at the same time sent to the agent of the opposite party. No other production can be used or put in evidence at the proof, unless by permission of the presiding judge, on cause shown to his satisfaction, and on such terms as he expresses, or otherwise as to him may seem proper (A. S., 31st May 1902). The Court allowed to be used and put in evidence at a proof a plan, the property of the Advocates' Library, which had not (nor had a copy of it) been lodged in process four days prior to the day of proof, but where notice had been given to the opposite party of the intention to use it (*Baird's Trs.*, 1903 (O. H.), 11 S. L. T. 114). Where a document essential to the proof of the defender's case had been searched for under a diligence, could not be discovered in time for lodging four days before the proof, but was found on the eve of the proof, the Court allowed it to be put in evidence, imposing, in the circumstances, no condition as to expenses (*Campbell and Others*, 1902 (O. H.), 10 S. L. T. No. 255).

Lunacy Board (VIII. 169).—The Lunacy Board (Scotland) Salaries and Clerks Act, 1900 (63 & 64 Vict. c. 54), repeals so much of the Act of 1864 as relates to the salaries of the secretary and clerk of the Board; and enacts that the Board may appoint, with the approval of the Secretary for Scotland, such number of clerks as the Treasury may sanction; the secretary and clerks are to receive such salaries as the Treasury may assign; and such salaries, together with the expenses of the Board, to the amount sanctioned by the Treasury, are to be paid out of moneys provided by Parliament.

Machinery.—See also **FIXTURES** (XIV. *supra*).

Malversation of Office.—See **COUNCILLOR OF A BURGH** (XIV. *supra*).

Mandatory (Judicial) (VIII. 195).—Pursuer, a British soldier absent on foreign service, was not required to sist a mandatory. If a pursuer cannot find a person to be his mandatory, he may himself return to this country and prosecute his suit; but one who is absent on the public service may be unable so to return, and on that ground deserves consideration (*Graham*, 1901, 4 F. 1, 9 S. L. T. No. 162, 39 S. L. R. 3, per *Ld. McLaren*; *Ld. Deas* in *Simla Bank*, 8 M. 781). A foreigner resident in England and pursuing an action in Scotland will not be called upon to sist a mandatory so long as he remains in the United Kingdom. But if his circumstances are such that a Scottish pursuer similarly placed would be required to find caution for expenses, he may be compelled to sist a mandatory. Mere poverty is no sufficient ground for requiring a person to sist a mandatory (*Dessau*, 1897, 24 R. 976, 5 S. L. T. No. 101, 34 S. L. R. 739). A foreign litigant may sist as a mandatory a person subject to the

jurisdiction of the English Courts (*Blow*, 1903, 5 F. 444, 10 S. L. T. No. 394, 40 S. L. R. 358).

Manse (VIII. 202).—Where heritors were under obligation to supply the manse with water, and did so, and the manse was thereafter included in a special water supply district, the heritors were held not bound to relieve the minister of the water rate (*Smith*, 1903, 5 F. 333, 10 S. L. T. No. 390, 40 S. L. R. 303).

Market Gardeners.—See AGRICULTURAL HOLDINGS ACTS (XIV. *supra*).

Merchant Shipping Act (XI. 326, XI. 103).—See SHIPPING (XIV. *infra*).

Military Lands Act, 1903 (VIII. 331).—The Act of 1892 has been amended by the Acts, 1897 (60 & 61 Vict. c. 6), 1900 (63 & 64 Vict. c. 56), and 1903 (3 Edw. VII. c. 47). The last-mentioned gives to the council of a county or a burgh power, at the request of one or more volunteer corps, by agreement, to hire land on behalf of the volunteer corps for military purposes, for a period of not less than twenty-one years; and power also to contribute towards the expenses incurred by another council in purchasing or hiring land for these purposes. The expenses of so hiring or contributing may be defrayed in the same manner as expenses of purchasing. Land so hired may be leased to the volunteer corps.

Mines.—See also CHILDREN (EMPLOYMENT OF) (XIV. *supra*); COAL MINES REGULATION ACTS (XIV. *supra*).

Prescriptive possession of coal under lands held on a barony title will give a vassal the right, not only to the coal under the lands themselves, but to coal under the sea *ex adverso* of the lands, unless the title be a bounding title (*Wemyss*, 1899 (H. L.), 2 F. 1, 7 S. L. T. No. 184).

Minor (VIII. 356).—The Infants' Relief Act, 1874, does not apply to Scotland (per Ld. Pearson in *Whitehead*, 1903 (O. H.), 10 S. L. T. No. 373). A minor who promises, without consent of his curators, to marry, is liable in damages for a breach of the promise (*ibid.*).

Money-Lenders.—The Money-Lenders Act, 1900 (63 & 64 Vict. c. 51), defines a money-lender as "every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business." It does not include a pawn-broker, any registered society within the meaning of the Friendly Societies Acts, any body corporate empowered to lend money, any person *bonâ fide* carrying on the business of banking or insurance, or any body corporate exempted for the time being from registration under the Act (s. 6). Money-lenders must register themselves, and carry on business in their registered

name (s. 2). Where in any proceedings under sec. 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged is deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age (s. 5). Where proceedings are taken in any Court by a money-lender for the recovery of any money lent after the commencement of the Act, or the enforcement of any agreement or security made or taken after the commencement of the Act, in respect of money lent either before or after the commencement of the Act, and there is evidence which satisfies the Court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, the Court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest, and charges, as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security, may order him to indemnify the borrower or other person sued (s. 1 (1)).

Monuments.—See ANCIENT MONUMENTS (XIV. *supra*).

Motor Cars.—On the first introduction of motor cars into this country, the law was content to regulate them as “locomotives on highways” (see *supra*, Vol. VIII. 142). But their numbers have so greatly multiplied, and their presence has become so universal on the highways, that they have now been placed in a legal category of their own, and the term “motor car” is now one known to the law. The Motor Car Act, 1903 (3 Edw. VII. c. 36), amends the Locomotives on Highways Act, 1896. The Statute is a temporary one, continuing in force until 31st December 1906, “and no longer, unless Parliament shall otherwise determine” (s. 21). It takes measures against *reckless driving* (s. 1), requires the *registration of motor cars* (ss. 2, 5), and the *licensing of drivers* (ss. 3, 4, 5), and prescribes a maximum rate of speed (s. 9). In the Act “motor car” has the same meaning as the expression “light locomotive” has in the Act of 1896, as amended by the Act, except that for purposes of registration the term does not include a vehicle drawn by a motor car (s. 20). By the Act of 1896 a “light locomotive” is “any vehicle propelled by mechanical power if it is under three tons in weight unladen [not including water, fuel, or accumulators used for the purpose of propulsion], and is not used for the purpose of drawing more than one vehicle [such vehicle with its locomotive not to exceed in weight, unladen, four tons], and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.”

1. *Registration*.—Every motor car must be registered with the council of a county, or with the council of a royal, parliamentary, or police burgh having a population of not less than 50,000. A separate number is to be assigned to every car. A mark indicating the registered number of the car and the council with which it is registered must be fixed on the car, or on a vehicle drawn by the car, or on both, in accordance with the regulations of the Secretary for Scotland made under the Act. The fee for registration is 20s., and 5s. in the case of motor cycles (ss. 2, 18). If a car is used on a public highway without being registered, or if the required mark is not fixed, or is in any way obscured or allowed to become "not easily distinguishable," the person driving the car is guilty of an offence under the Act, unless he proves that he has taken "all steps reasonably practicable" to prevent the mark being obscured or rendered not easily distinguishable. A general identification mark may, on payment of an annual fee not exceeding £3, be assigned to a manufacturer of or dealer in motor cars.

2. *Licensing of Drivers*.—A person may not drive a motor car on a public highway unless he is licensed for the purpose; and a person must not employ any one to drive a motor car who is not so licensed. If any one acts in contravention of this provision, he is guilty of an offence under the Act (s. 3 (1)). The county council or burgh council (as above defined) are to grant a licence to drive a motor car to any person applying for it who resides in that county or burgh, on payment of a fee of 5s., unless the applicant is disqualified as stated below (s. 3 (2)). The licence remains in force for twelve months from its date, and is renewable, on the same conditions (s. 3 (3)). The licence must be produced by any person driving a car, when demanded by a police constable, under a penalty on summary conviction of a fine not exceeding £5 (s. 3 (4)). Any person under the age of seventeen is disqualified for obtaining a licence (but a licence limited to driving motor cycles may be granted to any one over fourteen), and any person who holds a licence is disqualified for obtaining another licence while the first licence is in force (s. 3 (5)). *Suspension of Licence and Disqualification*.—Any Court before whom a person is convicted of an offence under the Act, or of any offence in connection with the driving of a motor car, other than a first or second offence consisting solely of exceeding any limit of speed fixed under the Act, may, if he holds a licence, suspend it for such time as the Court thinks fit, and also declare him disqualified for holding a licence for such further time as the Court thinks fit, or, if he does not hold a licence, declare him disqualified, for such time as the Court thinks fit, for holding a licence; and (if he holds a licence) must cause particulars of the conviction and of any order of the Court to be endorsed upon any licence held by him, and cause a copy of these particulars to be sent to the council by whom the licence so endorsed has been granted (s. 4 (1)). A person so disqualified may appeal against the order in the same manner as a person may appeal "who is ordered to be imprisoned without the option of a fine"—*i.e.* to the sheriff depute, the appeal being taken within seven days, and disposed of summarily (s. 19 (4), s. 4 (4)).

If any person forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, any mark for identifying a car or any licence, he is guilty of an offence under the Act.

3. *Reckless Driving, etc.*—If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway, and to the amount

of the traffic which actually is at the time, or which might reasonably be expected to be, on the highway, he is guilty of an offence under the Act (s. 1). He may be apprehended, without warrant, by a police constable if he refuses to give his name and address, or produce his licence, or if the motor car does not bear the mark or marks of identification (s. 1 (2)). If a driver who commits the offence of driving recklessly refuses to give his name or address, or gives a false name or address, he is guilty of an offence under the Act; and the owner of the car must, if required, give any information within his power which may lead to the identification and apprehension of the driver, and if the owner fails to do so, he also is guilty of an offence under the Act (s. 1 (3)). *Duty to Stop in case of Accident.*—A person driving a motor car must, in any case, if any accident occurs to any person (whether on foot, on horseback, or in a vehicle), or to any horse or vehicle in charge of any person, owing to the presence of the motor car on the road, stop, and if required give his own name and address, that of the owner, and the registration mark or number of the car. If he knowingly fails to do so, he is liable, on summary conviction, for a first offence to a fine not exceeding £10; for a second offence, not exceeding £20; and for any subsequent offence to a fine not exceeding £20, or, in the Court's discretion, to a term of imprisonment not exceeding one month (s. 6). *Rate of Speed.*—A person must not under any circumstances drive a motor car on a public highway at a speed exceeding 20 miles per hour (s. 9). Within any limits or space referred to in regulations made by the Secretary for Scotland on the application of the local authority of the area (*i.e.* the road authority of any county or of any royal, parliamentary, or police burgh (s. 18)) a car must not be driven at a speed exceeding 10 miles per hour (s. 9). The penalty for a first offence is a fine not exceeding £10; for a second offence, not exceeding £20; and for any subsequent offence, not exceeding £50 (*ibid.*). A person cannot be convicted of exceeding 20 miles per hour merely on the opinion of one witness as to the rate of speed (*ibid.*).

The Secretary for Scotland may, under sec. 6 of the Act of 1896, make regulations (s. 7); and he may prohibit motor cars on *special roads* which do not exceed 16 feet in width (s. 8). Power is also given him to increase the maximum weights of 3 tons and 4 tons mentioned in the Act of 1896, as respects any class of vehicles (s. 12).

Penalties, etc.—A person guilty of an offence under the Act for which no special penalty is provided, is liable on summary conviction in respect of each offence to a fine not exceeding £20, or in the case of a second or subsequent conviction to a fine not exceeding £50, or in the discretion of the Court to imprisonment for a period not exceeding three months (s. 11 (1)). Any person adjudged to pay a fine exceeding 20s. may appeal to the sheriff depute, as regulated by sec. 18 (6) (7). Nothing in the Act is to affect the liability of any driver or owner by virtue of any statute or at common law (s. 15); and the Act, as also the Act of 1896, are declared to apply to persons in the public service of the Crown (s. 16).

Municipal Elections (VIII. 385).—*Use of Schoolrooms.*—By the Municipal Elections (Scotland) Act, 1897 (60 & 61 Vict. c. 34), sec. 6 of the Ballot Act is to apply to municipal elections in Scotland—*i.e.* the returning officer may use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable

out of any local rate; but he must make good any damage done to the room, and defray any expense incurred by those having control of the room, in consequence of its being so used by the returning officer.

Musical Copyright.—See COPYRIGHT (XIV. *supra*; and III. 305).

Naval Volunteer Reserve: Royal Marine Volunteers.—The Naval Forces Act, 1903 (3 Edw. VII. c. 6), provides for the constitution of a Royal Naval Volunteer Reserve Force, and a Force of Royal Marine Volunteers.

New Trial (IX. 16).—See JURY TRIAL (XIV. *supra*).

Oaths (IX. 75).—See JUSTICE OF THE PEACE (XIV. *supra*).

Patents (IX. 199).—The Patents Act, 1901, extends the time within which a person who has applied for protection for an invention, etc., in any foreign state or colony must apply for a patent in this country, from seven months to *twelve months* (1 Edw. VII. c. 18, s. 1, amending 46 & 47 Vict. c. 57, s. 103 (1)).

By the Patents Act, 1902 (2 Edw. VII. c. 34), the examiner, where an application for a patent has been made and a complete specification is deposited, is required to make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional, not followed by a complete, specification (s. 2)) published before the date of the application, and deposited pursuant to any application for a patent made in the United Kingdom within fifty years before the date of application (s. 1). If the invention has been so claimed or described, the applicant is allowed an opportunity of amending his specification, and the amended specification is to be investigated in a similar manner (*ibid.*).

Compulsory Licences.—Sec. 3 amends the law relating to compulsory licences, repealing sec. 22 of the Act of 1883, and enacting that—(1) Any person interested may present a petition to the Board of Trade alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent; (2) The Board of Trade shall consider the petition, and if the parties do not come to an arrangement between themselves, the Board of Trade, if satisfied that a *prima facie* case has been made out, shall refer the petition to the Judicial Committee of the Privy Council, and, if the Board are not so satisfied, they may dismiss the petition; (3) Where any such petition is referred by the Board of Trade to the Judicial Committee, and it is proved to the satisfaction of the Judicial Committee that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by an Order in Council to grant licences on such terms as the said Committee may think just; or, if the Judicial Committee are of opinion that the reasonable requirements of the

public will not be satisfied by the grant of licences, the patent may be revoked by Order in Council: Provided that no order of revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default; (4) On the hearing of any petition under this section, the patentee and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceeding, and the law officer or such other counsel as he may appoint shall be entitled to appear and be heard; (5) If it is proved to the satisfaction of the Judicial Committee that the patent is worked or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner shall be entitled either to an order for a compulsory licence, or, subject to the above proviso, to an order for the revocation of the patent; (6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (a) any existing industry or the establishment of any new industry is unfairly prejudiced, or (b) the demand for the patented article is not reasonably met; (7) An Order in Council directing the grant of any licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and made between the parties to the proceeding; (8) His Majesty in Council may make rules of procedure and practice for regulating proceedings before the Judicial Committee under this section: and, subject thereto, such proceedings shall be regulated according to the existing procedure and practice in patent matters. Any Order in Council or any order made by the Judicial Committee under this Act may be enforced by the High Court as if it were an order of the High Court; (9) The costs of and incidental to all proceedings under this section shall be in the discretion of the Judicial Committee, but in awarding costs on any application for the grant of a licence, the Judicial Committee may have regard to any previous request for, or offer of, a licence made either before or after the application to the Committee; (10) For the purposes of this section, three members of the Judicial Committee shall constitute a quorum; (11) This section shall apply to patents granted before as well as after the commencement of this Act. Where a patent belongs to two persons in common, each co-owner can work the patent by himself or his agents without the consent of the other, and without accounting to that other for the profits. The right conferred by a patent is the right to exclude all the world other than the patentees, but not the patentees themselves, from using the invention (*Downie*, 1901 (O. H.), 9 S. L. T. No. 276; *Mathers*, 1865, L. R. 1 Ch. 29; *Steers* (H. L.), [1893] A. C. 232).

Penalties (Statutory).—See IMPRISONMENT (XIV. *supra*).

Pharmacy Acts (IX. 264).—The Acts (1852–1868) are amended by 61 & 62 Vict. c. 22. Apprentices or students are eligible to be elected “Student Associates” of the Pharmaceutical Society of Great Britain (s. 2); and registered chemists and druggists (within the meaning of the Act of 1868) are eligible to be elected members of the Society (s. 3).

Instead of the provisions contained in the Royal Charter of Incorporation, new regulations are substituted regarding the retirement of Members of Council by rotation (s. 4), and provision is made for voting papers being used at elections of officers (s. 5).

See also SALE OF FOOD AND DRUGS and VETERINARY SURGEONS (XIV. *infra*).

Pistols Act, 1903 (3 Edw. VII. c. 18).—This Statute was passed to regulate the sale and use of pistols—a pistol being any “firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, and of which the length of barrel, not including any revolving detachable or magazine breach, does not exceed nine inches” (s. 2). It is unlawful to sell by retail, or by auction, or to let on hire, a pistol to any person, unless at the time of the sale or hire the person either produces a gun or game licence then in force, or gives reasonable proof that he is a person entitled to use or carry a gun without a gun or game licence (by virtue of sec. 7 of the Gun Licence Act, 1870), or that, being a householder, he purposes to use the pistol only in his own house or the curtilage thereof, or that he is about to proceed abroad for a period of not less than six months, and produces a statement to that effect, signed by himself and a police officer (of rank not lower than that of inspector) of the district within which he resides, or by himself and a justice of the peace (s. 3). Every person who sells by retail or lets on hire a pistol must, before delivery, enter in a book to be kept (and open to the inspection of the police and Inland Revenue officers) for that purpose a description of the pistol, the date of the sale, the name and address of the purchaser or hirer, and the office from which the gun or game licence produced was issued, the date of the licence, or the circumstances exempting the purchaser or hirer from having such a licence (*ibid.*). The penalty for contravention of these provisions, or for knowingly making any false entry or statement, is a fine not exceeding £5 (*ibid.*). If any person, under the age of eighteen and not exempt from using or carrying a gun without a gun or game licence, buys, hires, uses, or carries a pistol, he is liable to a penalty not exceeding 40s.; and if any one knowingly sells or delivers a pistol to such a person, he is liable to a penalty not exceeding £5. The Court may make an order as to the forfeiture or disposal of the pistol in such a case (s. 4). Any one who knowingly sells a pistol to a person who is intoxicated or is not of sound mind is liable to a penalty not exceeding £25, or to be imprisoned with or without hard labour for a period not exceeding three months (s. 5). The provisions of the Act do not apply where an “antique pistol” is sold as a curiosity or ornament (s. 8), but “antique pistol” does not include any pistol with which ammunition is sold, or “which there is reasonable ground for believing is capable of being effectually used” (s. 2). Offences may be prosecuted, and any fine in respect thereof recovered, and any summary order under the Act made, in the manner provided by the Summary Jurisdiction (Scotland) Acts.

Poinding (IX. 292).—Where sheep stray upon lands, the possessor of the lands may pound the animals until he be paid one half-merk for each beast and the expenses of its keep (Winter Herding Act, 1686, c. 11). The right to retain stray sheep is limited to retention for payment of the penalties due in respect of those actually poinded. It does not entitle the

poinder to retain until payment has been made of penalties due in respect of other animals belonging to the same owner which had strayed on a previous occasion, and which had been poinded but released before payment (*Fraser*, 1899, 1 F. 487, 6 S. L. T. No. 414, 36 S. L. R. 377).

Police (IX. 304).—The law relating to the administration of burghs in Scotland has been further amended by the lengthy Burgh Police (Scotland) Act, 1903 (3 Edw. VII. c. 33). Part I. is General, and applies to every burgh to which the Act of 1892 applies. Part II. is Adoptive, and applies to every such burgh only if and so far as the town council resolve to adopt it, in whole or in part (s. 98). Part III. contains Miscellaneous and Supplemental provisions. Part I. provides, *inter alia*, for the preparation of a register of streets (ss. 1 *et seq.*), and makes other provisions regarding streets and sewers; further regulates procedure in and powers of the Dean of Guild Court; confers powers as to public parks (erecting pavilions, shelters, etc., providing music, etc.), as to rating and borrowing, and deals with offences and penalties (betting in streets, offences in connection with the manufacture of ice-cream, etc.). Part II. (adoptive) provides, *inter alia*, for the preparation of a supplementary Valuation Roll; lays down rules regarding the width of streets, height of houses, open spaces, etc.; requires a licence for the erection of sky-signs (s. 76) and advertising sites (s. 77); makes new provisions regarding byelaws for theatres and other places of amusement (s. 80); requires billiard rooms, bagatelle rooms, etc., to be licensed (s. 81), and ice-cream shops and aerated-water shops to be registered (s. 82); and deals with the supply of milk from diseased cows (ss. 83 *et seq.*).

See also TOWN COUNCILS (XIV. *infra*).

Pollution of Rivers Prevention.—See RIVER (XIV. *infra*).

Poor: Poor Law (IX. 323).—The law relating to the settlement and removal of the poor in Scotland was altered in certain respects by the Poor Law (Scotland) Act, 1898 (61 & 62 Vict. c. 21).

Settlement (XI. 296).

The duration of residence requisite to acquire a settlement was fixed at *three* years by the Act 1672, c. 18. In 1845 (8 & 9 Vict. c. 83) the period was increased to *five* years; but the Act of 1898 (s. 1) has again reduced it to *three* years. Where the parish councils of two or more parishes in Scotland differ as to which parish is the settlement of a poor person, but are agreed as to the facts on which such settlement depends, they may refer the case for determination by the Local Government Board, whose determination is final (s. 2).

Considerable difficulty has arisen, in the unification and alteration of parishes, from the operation of the Statutes (1889, s. 51; 1894, s. 46) in breaking up a parish into fragments, each of which is made part of some other parish, without making any provision for the adjustment of rights of settlement, either acquired or in course of maturing, in the extinguished parishes. A settlement can be acquired by residence in a portion of a parish, which portion is subsequently absorbed by another

parish, coupled with continued residence in the absorbing parish—the two periods together amounting to the statutory period. The resulting settlement is in the absorbing parish (*Edinburgh Parish Council v. Gladsmuir P. C.*, 1901, 3 F. 753, 9 S. L. T. No. 17, 38 S. L. R. 505; Lord Kinneir diss. Cp. *Edinburgh P. C. v. Lauder P. C.*, 1901 (O. H.), 8 S. L. T. No. 123, 38 S. L. R. 509; *Edinburgh P. C. v. Glasgow P. C.*, 1898, 25 R. 385; *Edinburgh P. C. (McGraw's case)*, 1898, 5 S. L. T. No. 333). A pauper of weak mind, who has not been certified a lunatic, can acquire a residential settlement (*Kirkintilloch Parish Council*, 1901 (O. H.), 9 S. L. T. No. 349; *Edinburgh P. C. v. Withorn*, 1903 (O. H.), 11 S. L. T. p. 12). A residential settlement in a parish can be acquired by residence in a charitable institution, situated within the parish, at the sole expense of the charity (*Kirkintilloch P. C.*, *at supra*). An acquired settlement is lost by residence elsewhere for a period of three years continuously, although the pauper has, during the currency of the three years, been insane (*Keith P. C.*, 1901, 4 F. 76, 9 S. L. T. No. 186, 39 S. L. R. 100).

Removal (IX. 341).

By the Act of 1898 (s. 3), a right of appeal, against removal, to the Local Government Board is given to a pauper, provided he shall have resided continuously for not less than one year before the date of the application for relief in the parish in which he applies for relief. In the case of a widow, her deceased husband's residence is, if necessary, reckoned as part of her residence in conferring this right of appeal. There is a similar right of appeal against removal of a pauper to England or Ireland (s. 5). The Act of 1845, s. 77, and the Act of 1852, ss. 2, 4, which provide for the removal from Scotland to England, Ireland, or Isle of Man, of paupers becoming chargeable, have no application to the French-born wife of an Englishman (*Alston*, 1903, 5 F. 922, 11 S. L. T. p. 158, 40 S. L. R. 683).

Prescription (IX. 392).—*Computation of Time*.—The years of prescription are counted from midnight of the day on which the event happened up to midnight of the date which ends the period (*Simpson*, 1900, 4 F. 447). Prescription runs *de momento in momentum*, and is interrupted by the service of a summons at any time on the last day of the prescriptive period (*Simpson*, 1899 (O. H.), 6 S. L. T. No. 433). *Title*.—To create a prescriptive right, possession and enjoyment must be referable to some title, actual or presumed, sufficient to create the right. For nearly 100 years successive heirs of entail in possession of lands astricted to a mill, paid to the owner a yearly sum fixed by a predecessor as a commutation of the miltures, the obligation to pay not being made a burden on the estate. The payments were made in virtue of the commutation contract. It was held that they were not made in virtue of any right which could be made good against a succeeding heir of entail. The millowner had not acquired a prescriptive right to exact the commutation payments; nor, on the other hand, was the thirlage lost by non-user during the period of the commutation payments (*Grant's Trs.*, 1903, 5 F. 868, 11 S. L. T. p. 95, 40 S. L. R. 658). Possession of land for the prescriptive period, on an *ex facie* valid title, absolutely excludes inquiry into earlier titles, although the infetment refers to these, and on examination they disclose that the infetment proceeded *a non habente potestatem*. The right is implegnable on any ground of challenge not founded upon some intrinsic

nullity or forgery (*Fraser*, 1898, 25 R. 603, 5 S. L. T. No. 415, 35 S. L. R. 471. See *Simpson*, 1900, 2 F. 447). *Measure of Right*.—Prescriptive rights are measured by the extent of use or possession. Where a riparian proprietor had, during the prescriptive period, withdrawn water from a stream by means of a lade and sluices, it was held that the quantity of water drawn off, and not the quantity which the lade was capable of abstracting, was the measure of his right (*Earl of Kintore*, 1902, 5 F. 818, 10 S. L. T. No. 312, 40 S. L. R. 210).

Presumptions (X. 2).—Where (by virtue of the Presumption of Life Limitation Act) a person is presumed to have died at a certain date, and was unmarried when last heard of, there is no presumption that he died married and survived by issue: the person claiming estate on the ground of his death has not to meet any such presumption (*Shepherd's Trs.*, 1902 (O. H.), 9 S. L. T. No. 410). Although the Courts have never recognised that there is any age at which a woman is to be presumed to be past child-bearing, the Court may, in considering a particular case, where no other interest can be involved except that of prospective issue, act on a presumption, *hominis et facti*, based upon what is known as possible or impossible, according to the experience of mankind; accordingly they held that a woman of seventy was past child-bearing (*De la Chaumett's Trs.*, 1902, 2 F. 745, 10 S. L. T. No. 2, 39 S. L. R. 524). In the case of a woman of fifty-seven, trustees were authorised to pay on the footing that she would have no more children (*McPherson's Trs.*, 1902, 4 F. 921, 10 S. L. T. No. 84, 39 S. L. R. 657). These two cases were decided by the Second Division. There have been two recent decisions of the First Division which seem to conflict with these (*Gollan's Trs.*, 1901, 3 F. 1035, 9 S. L. T. No. 102, 38 S. L. R. 762; *Beattie's Trs.*, 1898, 25 R. 765, 5 S. L. T. No. 469, 35 S. L. R. 580).

Principal and Agent (X. 13).—An auctioneer warrants his authority to sell. If he puts up an article by mistake, and it is afterwards reclaimed by the owner, he is liable in damages to the purchaser (*Anderson*, 1903 (O. H.), 11 S. L. T. p. 93).

Private Legislation Procedure (Scotland) Act, 1899: Provisional Orders under the (X. 32; X. 83).—The procedure for obtaining parliamentary powers in matters relating to Scotland has been completely recast by the Private Legislation Procedure (Scotland) Act, 1899, which came into operation on 8th August 1900 (s. 19). The leading feature of the Act is the substitution of procedure by way of provisional order for the previous procedure by way of private bill, but the new system is not completely assimilated to the provisional order system previously in existence under various Acts applicable to specified classes of public undertakings (see PROVISIONAL ORDER, *ante*, Vol. X. p. 83), for it possesses, as will be seen, certain novel characteristics of its own. The first point to be observed is that it is no longer competent to apply direct to Parliament for a private bill in any matter affecting public or private interests in Scotland, it being provided by sec. 1 of the Act that all such applications for parliamentary powers must now be initiated by the presentation of a petition to the Secretary for Scotland, praying him to

issue a provisional order in accordance with the terms of a draft order submitted to him, or with such modifications as shall be necessary. To this rule sec. 16 (3) makes an exception in the case of estate bills within the meaning of the Standing Orders of the Houses of Parliament, to which the Act is not to apply; and sec. 16 (2) further provides that the Act is not to confer upon the Secretary for Scotland power to make provisional orders "authorising and regulating the supply of electricity for lighting or other purposes." Electric lighting undertakings in Scotland can thus only be authorised by Board of Trade provisional orders under the Electric Lighting Acts. The provision quoted does not appear to render incompetent applications under the Act for power to produce or supply electric energy (see *Falkirk and District Tramways*, 1901, 1 Private Legislation (Scotland) Reports 30, 38 S. L. R. 863, and G. O. 25b); but it may be noted that applications which have been made under the Act for power to set up generating stations for the supply of electricity in bulk for all purposes have in view of this provision been directed to proceed in their subsequent stages by way of private bill, *e.g.*, the *Fife Electric Power Company Order* and the *Scottish Central Electric Power Order*, both in 1903.

The Act provides merely the general outline of the new system of procedure, leaving the details to be regulated by means of General Orders, which the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons (referred to throughout the Act and in this article as "the Chairmen"), acting jointly with the Secretary for Scotland, are directed by sec. 15 to make for the regulation of proceedings under the Act. These General Orders, which may be varied from time to time, require to be laid before both Houses of Parliament, and may be rescinded by resolution of either House within a month thereafter (s. 15 (3)). Provision is made by the General Orders for the incorporation with each order of such general Acts as would, if the order were a private bill, be incorporated therewith according to the ordinary practice of Parliament (s. 15 (2), G. O. 143). Copies of the General Orders issued under the Act, as amended up to December 1903, may be obtained from the agents for the sale of Government publications, at the price of one shilling. The General Orders also contain a large number of regulations applicable to special classes of undertakings, *e.g.*, railways, tramways, water, gas, etc., which it would be out of place to detail here, but which require the careful attention of promoters of such undertakings.

The preliminary procedure prescribed by the General Orders for an application under the new Act follows closely the procedure prescribed by the Standing Orders for an application to Parliament for a private bill (see PRIVATE BILL, *ante*, Vol. X. p. 35). The necessary steps consist in obtaining certain consents, in giving certain notices by advertisement and service, and in making certain deposits in various public offices of plans, documents, and money. For the details of these requirements and the dates by which they must respectively be fulfilled, reference is made as regards advertisements to G. O. 3-10, as regards notices and applications to owners, lessees, and occupiers of property affected to G. O. 11-22, as regards the deposit of documents to G. O. 23-38, as regards the forms of plans, books of reference, and sections to G. O. 40-55, as regards estimates, deposit of money, and declarations to G. O. 56-61, and as regards consents in particular circumstances to G. O. 22, 62-68, 137. General Order 61 provides for the giving of additional notices and the making of additional deposits where, during the progress of a provisional order, alterations are made in the work as originally proposed in the order. The consents and deposits

required vary according as the order belongs to one or other of the two classes into which all provisional orders under the Act are classified by General Order 1. The general principle of the classification is to distinguish between orders which do and orders which do not relate to constructive undertakings, the requirements as to consents and deposits being necessarily much more elaborate in the case of the latter class of undertakings. It has been held that an order sanctioning and confirming the construction and working of a railway already constructed without parliamentary authority is a second-class order (*Lanarkshire and Dumbartonshire Railway*, 1903, 3 P. L. R. 57).

The most important distinction to be noticed between the former procedure in applications for private bills and the procedure under the new Act is that applications for provisional orders may be made at two periods in the year instead of only one, viz., in December and in April, so that promoters in Scotland have now two opportunities in the year for applying for parliamentary powers. The time and method of applying for a provisional order are prescribed by General Order 2*b*, the dates for lodging the petition and draft order with the Secretary for Scotland being 17th April or 17th December in each year, or within three days prior to each of these dates. The General Orders fix the dates for advertisements, notices, and deposits alternatively with a view to application being made either in April or in December. (A convenient synopsis of the principal steps of procedure under the Act, prepared by the Scottish Office, will be found printed on pp. 432, 433 of Messrs. Constable and Beveridge's treatise on *Provisional Orders* under the new Act.) Other important innovations in the preliminary procedure which have been introduced by the General Orders, consist in the optional shortening of the notices by advertisement (G. O. 3, 6); in the authorisation of deposits by registered letter or parcel post as well as by personal delivery (G. O. 23); and in the requirement that notices and advertisements must state that the subsequent procedure will be by way of provisional order unless it is otherwise decided (G. O. 3).

It may be mentioned here that with a view to facilitating the working of the Statute, a senior and a junior counsel to the Secretary for Scotland for the purposes of the Act have been appointed, with an office in Edinburgh, to whom is entrusted the duty of supervising the draft orders presented, and acting as the local representatives of the views of the Scottish Office and of the various Government departments. Conferences are arranged between these counsel and the promoters, at which the terms of the various draft orders are provisionally settled.

The promoters having duly complied with the preliminary procedure required by the General Orders, and having lodged their petition and draft order with the Secretary for Scotland, the Chairmen proceed to take the draft order into consideration along with any dissents from or objections to any of the provisions of the order which have been stated in the prescribed manner and within the prescribed time. The Chairmen then issue a report on the order to the Secretary for Scotland, which is laid before both Houses of Parliament (s. 2 (1) (3)). If the report bears that the Chairmen or either of them is "of opinion that the provisions or some provisions of the draft order do not relate wholly or mainly to Scotland, or are of such a character or magnitude, or raise any such question of policy or principle, that they ought to be dealt with by private bill and not by provisional order," the Secretary for Scotland refuses without further inquiry to issue the provisional order, so far as the same is objected to by the Chairmen or Chairman (s. 2 (2)). The order may then proceed by way of private bill, the

notices and deposits already made being held as applicable to the procedure by private bill—notice, however, being required to be given to all opponents of the promoters' intention to proceed by way of private bill (s. 2 (4)). The principles upon which the Chairmen have proceeded in exercising their discretion under this section may be best gathered from their reports upon the draft orders submitted to them since the Act has been in operation. These will be found in the official Journal of Proceedings under the Act, issued from time to time by authority of the Secretary for Scotland, and also in Tables appended to the Private Legislation Reports above mentioned, which detail the purposes of the orders applied for in each year, with the Chairmen's decisions upon them. It may be said generally that important railway orders affecting the main lines, orders involving new departures in legislative policy, orders relating to Scottish companies with large interests or a wide membership out of Scotland, and orders for the supply of electricity (see s. 16 (2)), will not in the general case be allowed to proceed by provisional order, but will be relegated to the old procedure by private bill. The Act contemplates the splitting up of orders and the allowance of procedure by provisional order with regard to part of the order only, the rest being directed to proceed by private bill, and this course has been adopted by the Chairmen in several instances.

Should the Chairmen report in favour of an order being allowed to proceed, the promoters are required to satisfy an examiner that the General Orders as to notices, deposits, etc., have been complied with (s. 3 (1)). For the purposes of the Act, the Chairmen select one or more of the examiners appointed under the Standing Orders, whose duties under the Act are analogous to those now performed under Standing Orders (s. 13). The proceedings in connection with the examinations are regulated by General Orders 69–75. Proof of compliance is established chiefly by affidavits (see G. O. 75) and production of documents, the matters to be proved being set forth in printed forms, styled "statements of proofs." Proof of compliance has been allowed to be made in the case of a simple order of the first class by means of affidavits transmitted by post, the personal attendance of the agent being dispensed with (*Stonehaven Town Hall*, 1902, 2 P. L. R. 72). The examiners have a discretion as to the time and place of the examination, which may be held in Scotland (G. O. 69). Provision is made by sec. 13 for the remuneration, and by sec. 14 for the travelling and subsistence allowances of examiners. Any person desiring to object on the ground of non-compliance with General Orders must address to the examiner, and deposit in the examiners' office, a memorial complaining of non-compliance, specifically stating the matter complained of, not later than three weeks after the lodging of the petition for the order when it relates to General Orders 3–59, and not later than three days before the day appointed by the examiner for the examination of the order with regard to further General Orders, when it relates to such Orders (G. O. 70). Notice is given of the day and place of the examination to the promoters and memorialists or their agents, and the parties are entitled to appear and be heard by themselves, their agents and witnesses, before the examiner (G. O. 70, 72). The examiner reports to the Chairmen and Secretary for Scotland whether the General Orders have or have not been complied with. In the latter event, the promoters may within seven days of the report apply to the Chairmen for dispensation with any General Order which has not been complied with, and the Chairmen's decision granting or refusing dispensation is final (G. O. 74). Dispensation may be granted conditionally, and the order cannot then

proceed until the examiner reports that the conditions attached have been satisfied (s. 3 (2)). The various points which have arisen under the Act with reference to compliance with General Orders and dispensation will be found reported in the Private Legislation Reports.

Compliance with the General Orders having been proved or dispensed with, the Secretary for Scotland proceeds to take the petition for the order into consideration, and if there is any opposition to the order he directs a local inquiry as to the propriety of assenting to the prayer of the petition, to be held by Commissioners appointed under the Act. If the order is not opposed, the Secretary for Scotland directs a local inquiry to be held only if he thinks inquiry necessary (s. 3 (1)). If the order is unopposed or the opposition has been withdrawn, the promoters appear before the Secretary for Scotland or his delegate to prove the preamble, etc. (G. O. 75*a*), and the Secretary for Scotland may forthwith make the order as prayed, or with such modifications as shall appear to be necessary, having regard to the recommendations of the Chairmen and of the Treasury and of such other public departments as shall be prescribed, the latter provision being designed to maintain the control of Parliament over private legislation and ensure uniformity (s. 7). If modifications are made on the order, fresh deposits are required, and the modified order is again referred to the examiners (s. 7 (1), G. O. 74). The Secretary for Scotland thereafter submits the order to Parliament in a confirming bill, and the order has no validity until confirmed by Parliament (s. 7 (2)). The confirming bill in such a case is deemed after introduction to have passed through all its stages up to and including committee, and is ordered to be considered in either House as if reported from a committee. After the confirming bill is passed in the one House, the like proceedings are taken in the second House (s. 7 (2)).

Where the order is opposed, or where inquiry is directed, although the order is unopposed, the procedure is different. An order becomes opposed by the deposit of a petition against it. The rules with reference to the preparation, signature, and presentation of petitions against orders are set forth in General Orders 77-79, and must be strictly complied with (G. O. 79). Such petitions must be addressed to the Secretary for Scotland and be signed by or on behalf of the petitioners. Twelve copies must be deposited at the office of the Secretary for Scotland, Whitehall, and copies must be sent to the promoters or their agents (G. O. 77). Provision is also made for lodging petitions in favour of an order. Opposing petitions must be lodged not later than four weeks after the petition for the order has been lodged, or, in the case of dissentients at a Wharnclyffe meeting under General Orders 62-66, not later than four weeks as aforesaid, or not later than seven clear days after the Wharnclyffe meeting, whichever date is later (G. O. 77). These rules as to the time of lodging opposing petitions do not apply where the petitioners complain of any matter arising during the progress of the petition before the Commissioners, or of amendments as proposed in the filled-up order (G. O. 79). The grounds of objection must be specifically stated, and the petitioners will only be heard on the grounds so stated (G. O. 78). The withdrawal of applications for and petitions against provisional orders, and also of memorials, is regulated by General Order 146 (see *Clyde Navigation Trust*, 1901, 1 P. L. R. 58, 38 S. L. R. 866; *Rothsday Tramways (Extension)*, 1902, 2 P. L. R. 30, 39 S. L. R. 880).

On an inquiry being directed by the Secretary for Scotland, the Commissioners selected for the purpose hold their sittings in public at such place in Scotland as they may determine, "with due regard to the subject-

matter of the proposed order, and to the locality to which its provisions relate" (s. 6) (see *Aberdeen Suburban Tramways*, 1902, 39 S. L. R. 873). The Commissioners, four in number, three being a quorum (s. 10 (5)), are appointed by the Chairmen from panels of the members of both Houses of Parliament formed under Standing Orders (see S. O., H. C. 253, H. L. 185), one of the Commissioners being at the same time nominated Chairman (s. 5 (1) (2)). The Chairman has a casting as well as a deliberative vote (s. 10 (6)). The Commissioners are primarily to be appointed two from the parliamentary panels of each House (s. 5 (3)), but, if this cannot be done, three or all of them may be members of the same parliamentary panel (s. 5 (4)). If the requisite number of Commissioners cannot be obtained from either of the parliamentary panels, provision is made for so many persons as are required to make up the number of Commissioners being taken by the Secretary for Scotland from an extra-parliamentary panel consisting of twenty persons, qualified by experience of affairs to act as Commissioners, whom the Act directs to be nominated for the purpose by the Chairmen acting jointly with the Secretary for Scotland (ss. 4, 5 (5)). Casual vacancies may be filled up by the Secretary for Scotland out of any of the panels (s. 5 (6)). The Commissioners must have no personal or local interest in any of the orders into which they are to inquire, and must make a declaration to that effect (s. 5 (8); see also G. O. 80). Sec. 14 provides for payment of their travelling and subsistence expenses.

The Chairman of the Commissioners appointed for any local inquiry must, as soon as may be after his appointment, inform the Secretary for Scotland of the time and place fixed for the inquiry, and the latter must then notify the promoters and objectors thereof. The inquiry must not, except of consent, be held before the expiry of seven days from the issuing of such notification, and the promoters must advertise the time, place, and subject of the inquiry. Three clear days before the inquiry, the promoters must deposit at the office of the Secretary for Scotland, Whitehall, three signed copies of the filled-up order as proposed to be submitted to the Commissioners, the term "filled-up order" being used to denote the order as embodying the amendments and adjustments which have been made as the result of negotiations between the promoters and the various public departments and objectors (G. O. 76).

As regards the conduct of the proceedings at the local inquiry, reference may be made to sec. 6 of the Act and General Orders 80-97. At the first inquiry held under the Act the Chairman announced that the general procedure to be adopted at such inquiries would follow the practice before parliamentary committees, the Commissioners being guided as to minor details by the practice of the Scottish Bar (*Highland Railway*, 1901, 1 P. L. R. 1, 38 S. L. R. 860; see also *Glasgow Corporation*, 1901, 1 P. L. R. 31, and *Paisley District Tramways*, 1901, 1 P. L. R. 70, for the order of evidence and speeches in the case of an order consisting of distinct parts, and in the case of competing applications). One of the two counsel to the Secretary for Scotland for the purposes of the Act undertakes the duty of clerk to the Commissioners. Parties may appear and be heard by themselves, their counsel, agents, and witnesses (s. 6 (3)). Sec. 10 deals with the powers of the Commissioners as regards the summoning and examination of witnesses, the committal of persons guilty of contempt of Court, and the enforcement of orders by the Commissioners, etc. The Commissioners are specially empowered to hear and determine any question of *locus standi* (s. 6 (1)), and the decisions pronounced by Commissioners on such questions will be found in the Private Legislation Reports and Scottish Law Reporter. The prin-

ciples of the parliamentary practice in this matter are recognised as generally applicable (see *LOCUS STANDI*, *ante*, Vol. VIII. p. 144). It is specially provided (s. 6 (1)) that Commissioners are not to sustain the *locus standi* of any person who has not in the prescribed manner, and within the prescribed time, objected to the proposed order, unless on special grounds established to the satisfaction of the Commissioners, and subject to such conditions as to costs or otherwise as the Commissioners may determine. (For decisions under this provision, see *Arizona Copper Co. Ltd.*, 1901, 1 P. L. R. 14, 38 S. L. R. 862; *Ayr County Buildings*, 1901, 1 P. L. R. 51; *Glasgow Corporation (Tramways and General)*, 1901, 1 P. L. R. 62, 38 S. L. R. 865; *Glasgow Corporation Tramways*, 1903, 3 P. L. R. 44.) A novel provision contained in sec. 17 gives a *locus standi* to persons objecting to an order on the ground that the undertaking proposed to be authorised will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery. Objections lodged on such grounds are to be considered by the Secretary for Scotland, who may, if he thinks fit, refer them to the Commissioners, who are directed to give the objectors a proper opportunity of being heard.

It is thought that the Commissioners have no power to award expenses except in the single case of their allowing a *locus* to late objectors under sec. 6 (1). See *Clyde Navigation Trust*, 1901, 1 P. L. R. 58. The Commissioners are to sit as far as possible from day to day, and on finishing the inquiry they must submit a report to the Secretary for Scotland with the evidence taken and the recommendations made by them. They may recommend that the order should be issued as prayed for or with modifications, or should be refused (s. 6 (5)). Recommendations made by the Chairmen or by any public department with reference to any particular order are referred to the Commissioners appointed to inquire into it, and the Commissioners must specially notice such recommendations in their report, and should they not agree to them must state their reasons for dissenting therefrom (s. 6 (4)). (See further as to the Commissioners' report, G. O. 87, 92-97, and as to matters directed to be specially reported upon, G. O. 101-106, 110-113, 122, 131, 132, 135, 136.) If the Commissioners report that the order should not be made, the Secretary for Scotland refuses to issue it, and the application fails, without appeal. Otherwise the Secretary for Scotland may issue the order as prayed for, or with such modifications as shall appear to be necessary in view of the recommendations of the Commissioners, the Chairmen, the Treasury, and other prescribed public departments. If any modification has been made on the draft order as originally lodged, the Secretary for Scotland must cause a printed copy to be deposited in the various public offices specified at least fourteen days before issuing the order (s. 8 (1), G. O. 98). As soon as possible after the issue of the order, the promoters must serve a copy of it upon the objectors who have not withdrawn (s. 8 (2), G. O. 77). All modified draft orders are referred by the Secretary for Scotland to the examiner for report as to whether the General Orders have been complied with (G. O. 74).

The order has no validity until confirmed by Parliament, and the Secretary for Scotland accordingly next proceeds to submit the order to Parliament in a confirmation bill (s. 8 (3)). If before the expiry of seven days after the introduction of the confirmation bill a petition is presented against the order, any member may give notice that he intends to move that the bill be referred to a joint committee of both Houses of Parliament. If the motion, which may be moved immediately after the bill is read a

second time, be carried, the bill stands referred to a joint committee accordingly, and parties may appear and be heard before the joint committee by themselves, their counsel, agents, and witnesses (s. 9 (1)). The joint committee hears and determines any question of *locus standi* (s. 9 (1)), and it has power by a majority to award costs (s. 9 (3)). Its report is directed to be laid before both Houses of Parliament. If, however, no such motion be made for the reference of the confirmation bill to a joint committee, the bill is to be deemed to have passed the committee stage and is ordered to be considered as if reported by a committee (s. 9 (4)). When the bill has been read a third time and passed in the first House, the like proceedings are directed to be taken in the second House (s. 9 (4)).

It may be taken that a confirmation bill will only be referred to a joint committee where there have been grave errors in procedure or a serious miscarriage of justice before the Commissioners, or where new and material facts have emerged (*Arizona Copper Co. Ltd.*, 1901, 1 P. L. R. 18), and a bill will only be recommitted where a good *prima facie* case has been set forth (*Glasgow Corporation (Police)*, 1901, 1 P. L. R. 36). It is thought that if no motion for recommitment is made in the House in which the confirmation bill originates, such a motion is not competent in the second House (*Ardrossan Harbour*, 1901, 1 P. L. R. 11). As regards the competency of introducing amendments at various stages in Parliament, see *Glasgow Corporation (Police)*, 1901, 1 P. L. R. 43; *Glasgow Corporation (Tramways and General)*, 1901, 1 P. L. R. 65; *Hamilton Burgh*, 1901, 1 P. L. R. 78.

The fees payable by promoters and objectors are fixed by the Chairmen acting jointly with the Secretary for Scotland, and with the consent of the Treasury, under sec. 15 (1), and are embodied in General Order 148. They are required to be remitted to the Scottish Office by letter addressed to the Under Secretary for Scotland, bank drafts and cheques being made payable to His Majesty's Paymaster-General and crossed to the account of that officer at the Bank of England. A daily note of fees payable in respect of proceedings before the examiner or Commissioners is handed to the parties appearing at such proceedings, the total falling to be remitted to the Scottish Office at the close of the proceedings in the manner above described (see the official *Journal*).

With regard to proceedings under or in pursuance of the Act, sec. 11 provides that county councils are to have the same powers and be subject to the same restrictions as they at present have or are subject to under sec. 56 of the Local Government (Scotland) Act, 1889, in regard to private bills or confirmation bills, while town councils are to have the same powers and be subject to the same restrictions as they now have or are subject to in regard to private bills or confirmation bills. As town councils in Scotland have no general statutory powers with regard to parliamentary proceedings, the section merely continues to them their constitutional right to petition Parliament. On the other hand, the effect of the section is to confer on county councils, subject to compliance with the provisions of the Municipal Corporations (Borough Funds) Act, 1872, which are incorporated into the Local Government (Scotland) Act, 1889, a statutory power to oppose provisional orders under the new Act, but not to promote them. County councils and town councils may make a report to the Commissioners appointed to inquire into any draft order relating to their localities (s. 11 (3)). [See Constable and Beveridge's treatise on *Provisional Orders*, which contains a detailed account of the procedure under the new Act and a large collection of forms; Greig's *Private Legislation Procedure*; the series of *Private Legislation (Scotland) Reports*, published annually by Messrs. William

Green & Sons, which contain reports of all important points decided under the Act, including decisions on compliance with General Orders and on *locus standi*, and also give the decisions of Commissioners on the merits of applications, where such are of general interest, and in many cases the full text of special clauses which the Commissioners have sanctioned, and which are likely to be useful as precedents.]

Procurator-Fiscal (X. 55).—A conviction obtained by a person acting for the procurator-fiscal during his absence, but not qualified, was quashed (*Walker*, 1899, 3 Ad. 102, 2 F. (J.) 18, 7 S. L. T. No. 281, 37 S. L. R. 239). The House of Lords (reversing the judgment of the Court of Session, from which Lord Young dissented) have held that the procurator-fiscal of Lanark is not entitled to remuneration from the County Council for the work done by him in the county other than (1) criminal prosecutions where papers are submitted to Crown Counsel, and (2) criminal prosecutions in the Sheriff Court proceeding on a warrant from the Sheriff (*Hart*, 10th March 1904 (H. L.), 11 S. L. T. p. 426).

Productions (X. 65).—See LODGING PAPERS, ETC. (XIV. *supra*).

Prostitution.—See IMMORAL TRAFFIC (SCOTLAND) ACT, 1902 (XIV. *supra*); DISORDERLY HOUSE (IV. 251); CRIMINAL LAW AMENDMENT ACT (III. 377).

Provisional Order (X. 83).—See PRIVATE LEGISLATION PROCEDURE (XIV. *supra*).

Public Authorities' Protection Act, 1893.—See REPARATION (XIV. *infra*).

Public Houses.—See LICENSING (SCOTLAND) ACTS (XIV. *supra*).

Quinquennial Prescription (X. 128).—Pursuers for arrears of multures were found entitled to prove their right to commuted multures, said to be due for years prior to the prescriptive period, by the writ or oath of the defenders (*Magistrates of Edinburgh*, 1903, 11 S. L. T. p. 105, 40 S. L. R. 666). Deposits are not "bargains relating to moveables or sums of money" in the sense of the Act 1669, c. 9, and questions relating to deposit can be proved *prout de jure* after the lapse of five years (*Taylor*, 1901, 4 F. 79, 39 S. L. R. 83). As to prescription of arrestments, a multiplepounding in regard to which had fallen asleep, and slept for forty years, see *Pillans & Co.* (1897 (O. H.), 5 S. L. T. No. 241).

Railways (X. 130).—*Construction*.—Sec. 16 of the Railway Clauses Act, 1845, empowers companies to do all things necessary "for making, maintaining, altering or repairing, and using the railway." A railway

company was bound by its Special Act to complete its work within seven years from the passing thereof. Many years after the expiry of these seven years, the company proposed to build an embankment by the side of a river, on ground shown in the plan and books of reference deposited with the application for their Special Act. The riparian proprietors opposite endeavoured to interdict them from proceeding with the work. It was held that the operations were within the company's statutory powers (*Dennistoun's Trs.*, 1900 (O. H.), 7 S. L. T. No. 444).

Commissioners.—The Court of Session has jurisdiction to entertain an action between two railway companies for the division of sums collected as freight for through carriage, and lying in the clearing-house as suspense account (*Great North of Scot. Rwy. Co.*, 1899 (O. H.), 7 S. L. T. No. 214).

Rates.—It does not constitute an undue preference for a railway company to issue season tickets to traders at rates varying in accordance with the amount of the traffic sent by each trader respectively over the line (*Inverness Chamber of Commerce*, 1901 (Railway Commissioners), 9 S. L. T. No. 54, 38 S. L. R. 842). It constitutes an undue preference for a company to deliver the goods of one trader at his private siding, and at the same time to refuse to deliver at his siding the goods of other traders (*Cowan & Sons*, 1901, 3 F. 677, 9 S. L. T. No. 255, 38 S. L. R. 514). The commissioners have no jurisdiction to order a company to deliver or receive goods at a private siding (*Cowan & Sons, cit.*).

Electrical Power.—With the object of facilitating the introduction and use of electrical power on railways, the Board of Trade is authorised (by 3 Edw. VII. c. 30) to make orders, upon the application of a railway company, for the purpose of enabling the company to introduce electricity in addition to or substitution for any other motive power. These orders, on coming into operation, have effect as if enacted by Parliament.

Light Railways.—The Act of 1901 (1 Edw. VII. c. 36) authorises the payment of salary to a second commissioner.

Prevention of Accidents.—See ACCIDENTS ON RAILWAYS (XIV. *supra*).

Rape (X. 175).—See also CRIMINAL LAW AMENDMENT ACT (XIV. *supra*).

Rating (X. 176).—A. *Valuation.*

“Machinery fixed or attached.”—See FIXTURES (XIV. *supra*). The doctrine of *res judicata* has no application in questions before the Lands Valuation Appeal Committees (*Lamont*, 1900, 2 F. 610). *Value.*—The obligation binding on a “tied” public-house tenant to take his liquor from the landlord is a “consideration other than rent” (*Amnan*, 1899, 1 F. 586, 36 S. L. R. 600). Relationship between landlord and tenant does not *per se* affect the *bona fides* of a lease (*Reid*, 1902, 4 F. 543, 9 S. L. T. No. 424, 39 S. L. R. 854; *Bowman*, 1900, 2 F. 604). A tobacco-stall in a railway station falls within the category of a book-stall rather than within that of a refreshment-stall. It is valued by the assessor of railways as part of the undertaking, and does not fall to be separately valued by the burgh assessor (*Glasgow Assessor*, 1899 (O. H.), 7 S. L. T. No. 14).

B. *Assessment.*

Buildings exclusively appropriated to public religious worship are

exempted from liability for rates for any county, burgh, parochial, or other local purpose (37 & 38 Vict. c. 20, s. 1); when mission and church halls are occasionally used for social meetings they do not fall within this exempted class (*College Street U.F. Church*, 1901, 3 F. 414, 8 S. L. T. No. 334, 38 S. L. R. 265). A county council are entitled to impose an assessment on a special drainage district to meet the expense, legal and other, incurred in connection with the formation of the district (*Inverarity*, 1903 (O. H.), 11 S. L. T. p. 248).

Reclaiming Note (X. 210).—A reclaiming note must be signed by counsel: it is not sufficient if the party sign it (*Hawks*, 1899, 2 F. 95, 39 S. L. R. 70). Although this is the rule, nevertheless where a party conducting his own case explained to the Court that he was unable to procure counsel's signature, the Court allowed him to sign the note himself (*Whyte's Factor*, 1900, 37 S. L. R. 784). Recently the Court also heard another case in which the reclaiming note was signed by the party himself (*Davies*, 1901, 4 F. 3, 39 S. L. R. 4).

An interlocutor in an entail petition granting the prayer subject to a report from a man of skill upon the terms of a particular document, may be competently reclaimed, notwithstanding sec. 6 of the Distribution of Business Act, 1857, which excludes review in summary petitions until the Lord Ordinary has pronounced judgment on the merits (*Macquenn*, 1899, 1 F. 859, 36 S. L. R. 649). In terms of that section, interlocutors upon the merits must be reclaimed within eight days, otherwise they become final. Where they are not so reclaimed, they cannot be reviewed on a reclaiming note against a subsequent interlocutor (*Barr's Curator*, 1903, 5 F. 856, 11 S. L. T. p. 73, 40 S. L. R. 625).

A reclaiming note boxed without prints of the record is incompetent, and cannot be heard even of consent (*Wallace*, 1899, 1 F. 575).

Reformatory Schools (IV. 379).—The Reformatory Schools Act of 1899 (62 & 63 Vict. c. 12) amends sec. 1 of the Act of 1893 (which section is printed at p. 379 of Vol. IV. *supra*) by adding this proviso to the end of that section, viz.: "Provided that where the offender is ordered to be sent to a certified reformatory school, he shall not in addition be sentenced to penal servitude or imprisonment."

Reparation (X. 281).—Where a medical practitioner makes, without authority, a *post mortem* dissection of a body, an action for damages lies against him at the instance of a child of the deceased (*Pollok*, 1900, 2 F. 354, 7 S. L. T. No. 337, 37 S. L. R. 270). "The person to whom papers are entrusted for a special purpose has only a qualified possession for that purpose, so that any ultroneous use of the papers by him is an infringement of the proprietary rights of their owner," and renders him liable in damages (per Ld. McLaren in *Brown's Trs.*, 1898, 25 R. 1112, 6 S. L. T. No. 140, 35 S. L. R. 877). In *Brown's Trustees'* case a clerk in a firm of solicitors made copies of clients' papers, showing the profits in a distillery, and sent the information to the Department of Inland Revenue.

The Public Authorities' Protection Act, 1893, provides that an action against any person for any act done in pursuance or execution or intended

execution of any public duty or authority shall not lie or be instituted unless it be commenced within six months after the act, neglect or default, complained of, or, if the injury be a continuing one, within six months next after the ceasing thereof. An action does not commence so as to stop the running of the time limit under the Act, by the intending pursuer within the six months merely taking steps to get upon the poor's roll (per *Id. Low* in *M'Ternan*, 1898, 1 F. 333, 6 S. L. T. No. 157, 36 S. L. R. 239). The Act does not apply to an action brought against a county council for damages for fault arising in course of carrying out the provisions of the Public Health Act, 1897, inasmuch as the latter Act contains special provisions as to the liability of the authorities, and specifies the time within which an action must be brought (*Gilikan*, 1902 (O. H.), 9 S. L. T. No. 368; see also *Duncan*, 1902, 5 F. 160, 10 S. L. T. No. 251, 40 S. L. R. 140). The Act does not apply where an action is raised against a county council for reduction of the election of a councillor (*Stirling*, 1900 (O. H.), 7 S. L. T. No. 351). Nor does it apply to an action between trustees on a public trust and vassals who claim repetition of sums overpaid by them (*Heriot's Trust*, 1900 (O. H.), 7 S. L. T. No. 369).

Revocation (X. 340).—A destination inserted in a bond and disposition in security by the creditor is not of the nature of a special legacy, and is revoked by a subsequent general disposition, in which the testator revokes "all former dispositions and settlements made by me." Even without such a clause, the general disposition itself may, on inference drawn from the settlement, be a revocation of prior settlements (*Bryden's Trs.*, 1898, 25 R. 708, 5 S. L. T. No. 447, 35 S. L. R. 345). On the other hand, a special destination of heritage taken by a proprietor will not be revoked by his subsequent general testamentary disposition, without very clear evidence of his intention to that effect (*Currie*, 1899, 1 F. 648). For a case where I.O.U.'s were in the circumstances held testamentary and not revoked, see *McCaw's Trs.* (1902, 10 S. L. T. No. 44). A clause in an ante-nuptial marriage-contract empowering the wife to call on the trustees to pay to her such portion of the trust funds conveyed to her as she might specify, for a specified purpose, "or for any other purpose," operates as power of revocation which entitles her to call on the trustees to denude (*Fowler's Trs.*, 1898, 25 R. 1034). As to the presumption in favour of revocation by the subsequent birth of a child, see *Smith's Trs.* (1897 (O. H.), 5 S. L. T. No. 246, 35 S. L. R. 129), and *Stuart* (1899, 1 F. 1005, 7 S. L. T. No. 114), where it was held that the will was not revoked, the lady having constructively confirmed it after becoming pregnant.

See also VESTING (XIV. *infra*); TRUST (XIV. *infra*).

Rivers Pollution Prevention Acts (X. 363).—The Act 61 & 62 Vict. c. 34, enables county councils on either side of the border to act together for the prevention of the pollution of rivers situated partly in England and partly in Scotland.

A riparian proprietor in right of salmon fishing has a right to prevent pollution of the river higher up stream, if the pollution injures spawning beds up the river to the prejudice of his fishing, although it does not directly affect the water *ex adverso* of his lands (*Seafield*, 1899, 1 F. 402, 6 S. L. T. No. 11, 36 S. L. R. 363).

Roads and Bridges (X. 366).—Road trustees must, in exercising their statutory right to take minerals for repairing roads, act reasonably, having regard to the interests of the proprietors of the lands, as regards amenity. They may not, *e.g.*, put back the face of a quarry so as to destroy an ornamental road (*Mercer Henderson's Trs.*, 1899, 2 F. 164, 7 S. L. T. No. 244, 37 S. L. R. 119. See also, as to limits in exercise of this right, *Whitson*, 1897, 24 R. 519; *Grahame's Curator*, 1900, 2 F. 671; *Meikle*, 1899, 37 S. L. R. 171).

[Ferguson, *Law of Roads, Streets, Rights-of-Way, Bridges, and Ferries*, 1904.]

Royal Titles Act, 1901.—This Act (1 Edw. VII. c. 15) was passed to enable His Majesty, by royal proclamation within six months thereafter, to recognise "His Majesty's dominions beyond the seas" in the style and titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies.

Sale of Food and Drugs (XI. 58).—Some amendments are made on the law as to the sale of food and drugs by the Act of 1899 (62 & 63 Vict. c. 51). A penalty (a fine not exceeding £20 for a first offence, not exceeding £50 for a second, and not exceeding £100 for a third) is imposed on any one importing into the United Kingdom any of these articles insufficiently marked, *viz.*—(1) margarine, or margarine-cheese; (2) adulterated or impoverished butter (other than margarine), milk, or cream; (3) condensed separated or skimmed milk; and (4) "any adulterated or impoverished article of food to which His Majesty may by Order in Council direct that the Act shall be applied." An article is not deemed to be adulterated by reason only of the addition of any preservative or colouring matter which is not injurious to health (s. 1 (7)). The Board of Agriculture may make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall, for the purposes of the Sale of Food and Drugs Act, raise a presumption, until the contrary is proved, that any of these articles is not genuine or is injurious to health (s. 4 (1)). The Margarine Act, 1887, is extended to margarine-cheese (s. 5). Every occupier of a manufactory of margarine or margarine-cheese, and every wholesale dealer in these substances, must keep a register showing the quantity and destination of each consignment sent out from his place of business, which shall be open to inspection (s. 7). The right of inspection carries with it a right to make excerpts or notes (*Cohen*, 1902, 4 F. 445, 9 S. L. T. No. 318, 39 S. L. R. 322). The amount of butter fat in margarine is restricted to 10 per cent. (s. 8). Any who, by himself or by his servant, in any highway or place of public resort, sells milk or cream from a vehicle or from a can or other receptacle, must have his name and address conspicuously inscribed on the vehicle; otherwise he is liable to a fine not exceeding £2 (s. 9). The Act defines "food" as including every article used for food or drink by man, other than drugs and water, and any article which ordinarily enters into or is used in the composition of human food; and also flavouring matters and condiments (s. 26).

Tobacco.—The Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35), limits

the amount of oil in tobacco to 10 per cent. Any fatty or oily substance which is naturally present in the tobacco is to be included as oil. Any one having in his custody or possession fit for sale, or tendering for drawback any tobacco containing a greater proportion of oil, incurs an excise penalty of £50, and the tobacco is to be forfeited.

[M. L. Howman, *Sale of Food and Drugs Acts* (1901).]

Salvage (XI. 65).—*Property*.—It is a fundamental rule of the law of salvage that something must be saved in order to give valid grounds for a salvage action. Services may be ever so meritorious; they may even result in the saving of life; but if they do not contribute in some degree to the saving of property, there can be no salvage award (*Duke of Portland*, 1900 (O. H.), 8 S. L. T. No. 74). A sailor is liable in damages if he refuse to deliver up the salvaged vessel after her owner has consigned the full amount of the salvage claimed (*Mackenzie*, 1903 (O. H.), 10 S. L. T. No. 464).

Life.—To found a claim for life salvage against a foreign vessel, the services must be “rendered wholly or in part within British waters” (Merchant Shipping Act, 1894, s. 544 (1)). Where the rescue is made on the high seas and the rescued persons are landed in England, there is no claim for life salvage (*Jorgensen*, 1902, 4 F. 319, 10 S. L. T. No. 130, 39 S. L. R. 765).

Seats in Churches (XI. 126).—See also HERITORS (XIV. *supra*).

Separation (of Spouses).—See JUDICIAL SEPARATION (XIV. *supra*).

Sequestration (XI. 166).—*Award*.—Sequestration of the estates of a deceased debtor is the process for the distribution of his estate. It may be applied for although the deceased was not insolvent; and it will be recalled on the petition of an executor, only if it appear that his administration will be more advantageous for all concerned than that of the trustee in the sequestration (*M. Letchie*, 1899, 1 F. 946, 7 S. L. T. No. 88, 36 S. L. R. 757). But the words “deceased debtor,” in sec. 13 (2) of the Act of 1856, are not equivalent to “dissolved company.” In order to obtain the sequestration of a dissolved firm, it is essential to produce evidence of its notour bankruptcy (*Stewart*, 1898, 25 R. 1042, 6 S. L. T. No. 113, 35 S. L. R. 828). Where the statutory requisites have been complied with, the Court has no discretion to refuse to award sequestration on the ground that a judicial factor has already been appointed under sec. 164 of the Act (*Arthur*, 1903 (O. H.), 10 S. L. T. No. 351). It is competent to pronounce a decree of sequestration under the Act against a body of executors-dative *quâ* executors (*Bain and Others*, 1901 (O. H.), 9 S. L. T. No. 9).

Ranking.—Sec. 65 of the Act implies that when a creditor in a sequestration values a security held by him for the purpose of ranking, he virtually offers that security to the sequestrated estate at the value put upon it. The offer needs acceptance. After acceptance, neither the creditor nor the trustee can renege from the bargain (*Macdougall's Tr.*, 1903, 11 S. L. T. p. 110, 40 S. L. R. 655).

Discharge of Bankrupt.—Pending a petition by a bankrupt for his discharge, he became insane, and a *curator* was appointed. On a petition by the *curator*, the Court, on a report by the Lord Ordinary, dispensed with the statutory declaration, and remitted to the Lord Ordinary to grant discharge (*Roberts*, 1901, 3 F. 779, 9 S. L. T. No. 18, 38 S. L. R. 586).

Servitudes (XI. 264).—*Constitution.*—A servitude may be established or proved by acquiescence inferring a grant, and creating a bar against its exercise being challenged even by the singular successors of the person acquiescing. But to give such a right, the thing acquiesced in must be visible and obvious, especially when it is of such a character and cost as to be inconsistent with its having been allowed merely during pleasure (*Macgregor*, 1899, 2 F. 345, 7 S. L. T. No. 275, 37 S. L. R. 245). An agreement between neighbouring holders of long leases, constituting rights of the nature of servitudes, is not enforceable against singular successors (*M'Tavish's Trs.*, 1900 (O. H.), 8 S. L. T. No. 73). There can be no servitude between two subjects which belong to the same heritor, and are separately possessed only by virtue of a contract of location. The doctrine of servitude is one well limited, and does not admit of being extended by analogy (*M'Tavish's Trs.*, *cit.*; see also *Metcalfe*, 1902, 4 F. 507, 9 S. L. T. No. 350, 39 S. L. R. 378). If two meanings can be placed on a clause imposing a servitude, that meaning is to be given effect to which is most favourable to the servient tenement (see *Clark & Sons*, 1898, 25 R. 919).

Extinction.—When the same person becomes owner, both of the dominant and servient tenement, the servitudes are extinguished, and do not revive upon the ownership of the tenements being again divided, unless they are constituted *de novo* (*Union Bank of Scotland*, 1902 (O. H.), 10 S. L. T. No. 40).

Right-of-Way.—Where a proprietor had for forty years enjoyed the use of a towing-path along the side of a canal as an access to his property, he was held to have no right to object to an interference with his passage caused by operations of the Canal Commissioners necessary for the performance of their statutory duty in conserving the canal (*Ellice's Trs.*, 1903 (O. H.), 11 S. L. T. p. 182). A somewhat similar rule was applied in the case of a bridge over a railway (*Edinburgh Corporation*, 1903 (O. H.), 11 S. L. T. p. 218). (See also on right-of-way, *Kinross C. C.*, 1900 (O. H.), 7 S. L. T. No. 308; *Cadell*, 1900 (O. H.), 8 S. L. T. No. 5).

Settlement.—(XI. 296). See POOR: POOR LAW (XIV. *supra*).

Sheep.—See DISEASES OF ANIMALS ACT, 1903 (XIV. *supra*).

Sheriff (XI. 305).—*Tenure of Office.*—Upon a report (at the instance of the Secretary for Scotland) by the Lord President and Lord Justice-Clerk declaring that a Sheriff is by reason of inability or misbehaviour unfit for his office, the Secretary for Scotland may issue an order for his removal from office (61 & 62 Vict. c. 8). Such order must lie before both Houses of Parliament for a period of four consecutive weeks while Parliament is sitting; and if either House within that period resolve that such order ought not to take effect, it is of no effect: otherwise it comes into operation

at the expiration of the month. If a Sheriff is so removed on the ground of inability before he has completed ten years' service, the Treasury may grant him an annuity of such amount and for such period as they consider just in the circumstances, but in no case exceeding three-tenths of his salary (s. 2).

Jurisdiction.—In all cases in which by statute the proper sentence is limited to two years, the Sheriff, sitting with a jury, has jurisdiction, unless excluded by special provision (per *Ld. J.-C. Macdonald* in *Wood v. Wright*, 1899 (J.), 2 F. 6, 7 S. L. T. No. 196, 37 S. L. R. 18).

Ship: Shipping (XI. 326).—The limitation of liability of ship-owners under sec. 503 of the Merchant Shipping Act, 1894, has been extended by the Act of 1900 (63 & 64 Vict. c. 32; see Vol. XI. p. 333), and now applies to all cases where (without their actual fault or privity) any loss or damage is caused to property of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship (s. 1). The Act also limits the liability of a harbour conservancy authority to an amount not exceeding £8 for each ton of the tonnage of the largest registered British ship which at the time of the loss or damage occurring is, or within five years previous thereto has been, within the area of the authority (s. 2). The limitation of liability under the Act relates to the whole of any losses and damages arising upon any one distinct occasion, although sustained by more than one person, and whether the liability arises at common law or under an Act of Parliament (general or private), and notwithstanding anything contained in such Act (s. 3). See also SALVAGE (XIV. *supra*).

Shop Assistants, Seats for.—In all rooms of a shop or other premises where goods are retailed to the public, and where female assistants are employed for the retailing, the employer must provide seats behind the counter, or in such other position as may be suitable for the purpose, in the proportion of not less than one seat to every three females employed (62 & 63 Vict. c. 21, s. 1). The penalty, on summary conviction, for failure to comply with this provision, is a fine not exceeding £3 for a first offence, and not less than £1 or more than £5 for a second or subsequent offence.

Shop Clubs Act, 1902.—See CLUBS (XIV. *supra*).

Small Dwellings Acquisition Act, 1899.—See HOUSING OF THE WORKING CLASSES (XIV. *supra*).

Specification and Diligence for the Recovery of Writings (XI. 378).—There is no rule that documents called for in a specification must clearly be admissible in evidence: the rule is that the diligence will be refused if it is shown that they cannot be evidence (per *Ld. Kinneir*, *Mackindry*, 1903, 40 S. L. R. 313, 10 S. L. T. No. 358; see also *Murphy*, 1902, 4 F. 653). There are two legitimate purposes, and two only, to be served by the examination of a haver. The first is to trace and

recover a document or its copy if it is extant; and the second is to account for its destruction if it has been destroyed; and no question which does not tend to one or other of these two ends is regular or competent (per *Ld. Stormonth-Darling, Somervell*, 1900, 8 S. L. T. No. 76).

Street Trading.—See CHILDREN, EMPLOYMENT OF (XIV. *supra*).

Succession (XII. 37).—The plea of collation *inter liberos*, in answer to a claim for legitim, can only be maintained by a party entitled to share in the legitim. Trustees representing the interest of the residuary legatees cannot maintain it (*Collins*, 1898 (O. H.), 5 S. L. T. No. 330, 33 S. L. R. 641). The decisions appear to conflict as to whether an heir-at-law who is also next-of-kin is entitled to a share of the income of the moveable estate without collecting the rents of heritage which he receives under the Thellusson Act (cp. *Logan's Trs.*, 1896, 23 R. 848, 4 S. L. T. No. 87, 33 S. L. R. 638, with *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140). The *conditio si institutus sine liberis decesserit* does not apply to the children of an illegitimate child (*Farquharson*, 1900, 2 F. 863, 7 S. L. T. No. 425, 37 S. L. R. 574).

See also JUS RELICTÆ (XIV. *supra*); TERCE (XIV. *infra*); ELECTION (XIV. *supra*); REVOCATION (XIV. *supra*); PRESUMPTIONS (XIV. *supra*); VESTING (XIV. *infra*).

Superiority (XII. 152).—*Casualty*.—The *dominium directum* and *dominium utile* of a fee passed into the same hands but were not consolidated. Subsequently they were disposed to separate disponees. While the two estates were in the same hands, the last entered vassal died. The new dispoinee of the *dominium utile* demanded a casualty. The Court held that the right to demand a casualty had not been extinguished *confusione* (*Motherwell*, 1903, 5 F. 619, 10 S. L. T. No. 487, 40 S. L. R. 429). Confusion does not operate extinction or discharge; it prevents the possibility of a debt arising; although the estates remained feudally distinct, the money obligations were meantime extinguished (per *Ld. Kinnear, ibid.*). In ascertaining the composition due by a vassal in lands which are partly in course of being worked under mineral leases, the returns from the mines for the year in which the casualty becomes exigible are to be counted as part of the rent (*Earl of Home*, 1903 (H. L.), 5 R. 619, 11 S. L. T. p. 44, 40 S. L. R. 607).

Feu-Contract.—Where a feu-contract contains an obligation on the vassal to build, and there are transmissions of the feu, each vassal in turn becomes liable for the performance of the obligation. Where there is a failure to build, the superior is entitled to sue for damages any vassal, or the representatives of any vassal who has died, although such representatives have not taken up the feu (*Rankine*, 1902, 4 F. 1074, 10 S. L. T. No. 170, 40 S. L. R. 4).

Suspension (XII. 206).—It is competent to suspend a charge given on a decree *ad factum præstandum* pronounced in absence in the Sheriff Court (*Lamb*, 1901, 4 F. 88, 9 S. L. T. No. 179, 39 S. L. R. 80).

But it is incompetent, by suspension, to bring under review a decree in absence obtained in the Debts Recovery Court, where the complainer has not exhausted his statutory remedies (*Crawford*, 1901 (O. H.), 9 S. L. T. No. 62). As to suspension of small debt decree in Court of Session, see *Curdie* (1902 (O. H.), 10 S. L. T. No. 279). Review by suspension of questions arising under the Valuation Acts is incompetent (per *Ld. Pearson*, *West Highland Railway Co.*, 1902 (O. H.), 10 S. L. T. No. 267).

Terce (XII. 241).—In computing terce the deduction of estate duty is a proper deduction. The principle of the Finance Act is that what falls to be taxed is the interest which ceases by death—not the interest to which some one succeeds upon the death. The estate is diminished to the person succeeding to it by the amount of the duty, and the case of a widow claiming terce forms no exception (*Ross*, 1902 (O. H.), 9 S. L. T. No. 286). A lady on her second marriage conveyed, by marriage-contract, to trustees her whole estate, including a right of terce in the estate of her former husband, for the purpose of paying to her the annual income, or to apply the same for her behoof. The terce subjects were sold under statutory powers, and the capitalised value of the terce was paid to the trustees. The Court held that they must so invest the surrogatum, in annuity or otherwise, that the lady should have the benefit of it and exhaust it during her life (*Bonner's Trs.*, 1898 (O. H.), 6 S. L. T. No. 42). By a deed which disposed of his whole estate, a testator bequeathed to his wife a life interest provision, to be taken by her in full of her legal rights. The persons named as heirs having died before the date of vesting, the fee fell into intestacy. In these circumstances the widow was held to be entitled to terce and *jus relicte* out of the intestate succession without forfeiting her testamentary provision (*Naismith*, 1899 (H. L.), 1 F. 79; cp. *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140; *Farquharson*, 1900, 2 F. 863, 7 S. L. T. No. 425, 37 S. L. R. 574).

Thirlage (XII. 249).—A claim for dry multures may be maintained against a suckener even where there is no mill remaining. This results from the nature of the case, because dry multures are paid by a suckener to discharge him from the necessity of resorting to the mill to which his land is thirled. No service being required in return, the mill may be given up (*Magistrates of Edinburgh*, 1903, 11 S. L. T. p. 105, 40 S. L. R. 666; *Porteous*, 1901, 3 F. 347, 8 S. L. T. No. 289, 38 S. L. R. 258).

Thrift Funds.—See CLUBS (XIV. *supra*).

Tobacco.—*Oil in Tobacco.*—See SALE OF FOOD AND DRUGS (XIV. *supra*).

Town-Clerk (XII. 281).—See 63 & 64 Vict. c. 49, s. 78, and 3 Edw. VII. c. 34, s. 6, as to the appointment and duties of town-clerk. For circumstances in which the Court appointed an interim town-clerk, see *Magistrates of Rothesay* (1902, 4 F. 461, 9 S. L. T. No. 419).

Town Councils (Scotland) Acts, 1900, 1903.—The Act 63 & 64 Vict. c. 49, as amended by the Act 3 Edw. VII. c. 34, consolidates and amends the law relating to the election and proceedings of town councils in Scotland. It also provides for the tenure of office of burgh officials, and for the making and auditing of burgh accounts. The Act chiefly consolidates the existing law, but several new provisions are introduced.

[M. L. Howman, *Town Councils (Scotland) Act, 1900, with Notes.*]

Trade, Board of (XII. 287).—The Act 3 Edw. VII. c. 31, transferred to the Board of Agriculture (now styled the Board of Agriculture and Fisheries) the powers and duties of the Board of Trade relating to the industry of fishing, as therein set forth. See FISHINGS (XIV. *supra*).

Trade Union (XII. 291).—An association of masters for the protection of their trade is a trade union, and cannot be registered under the Companies Acts (*Edinburgh Aerated Water, &c., Co.*, 1903, 11 S. L. T. p. 240, 4 S. L. R. 825).

Triennial Prescription (XII. 312).—Arrears of salary of an official in the employment of a municipal corporation are a debt to which the Act 1579, c. 83, applies (*Neilson*, 1899, 2 F. 118, 7 S. L. T. No. 229, 37 S. L. R. 71). Minutes of the town council minuting an official's appointment, but not delivered to him, do not constitute a "written obligation" in the sense of the Act (*Neilson, cit.*). A minute in the minute-book of a trust, duly signed, minuting the appointment of a solicitor to be law agent and factor on the trust-estate, is a "written obligation" under the Act (*Millar, Walker, & Millar*, 1902, 4 F. 846, 10 S. L. T. No. 59, 39 S. L. R. 651); so also is a written request to a law agent to do work, followed by his acceptance in writing (*Jackson*, 1900, 2 F. 968, 8 S. L. T. No. 24, 37 S. L. R. 707).

Trout, Close Time for.—See FISHINGS (XIV. *supra*).

Trust (XII. 326).—*Revocability*.—Where a man by post-nuptial marriage-contract assigns to trustees policies of insurance, as a reasonable provision for his wife and children born and to be born, and the deed is duly delivered, it cannot be revoked by him even with the consents of the wife and children (*Barras*, 1900, 2 F. 1094, 8 S. L. T. No. 87, 37 S. L. R. 831; *Low*, 5 R. 185; *Peddle's Trs.*, 18 R. 491). A reasonable post-nuptial provision amounts to a *jus crediti* in the wife, and it seems to follow that, when secured over heritable estate either by a deed in favour of the wife or in favour of trustees for her, it will operate as a preferential security in bankruptcy: "but I do not at present see on what principle such a deed should be held to be irrevocable by the joint act of the spouses. . . . It is difficult to see how [the principle of the irrevocability of an ante-nuptial provision secured by a trust] can be applied to the case of a post-nuptial provision, even when put into the form of a contract, because in all such cases the wife is just as free to discharge the provisions as she was to

accept it" (per Ld. McLaren in *Gillon's Trs.*, 1903, 5 F. 533, 10 S. L. T. Nos. 428, 469, 40 S. L. R. 461). In *Gillon's* case the husband granted a trust-deed in favour of his creditors, and provided for payment of the reversion in alimentary liferent to himself or his wife, should she survive him, and the fee as he might direct by his will, or to his heirs-at-law. The Court held that the trust was revocable by the truster with consent of his wife. See further, VESTING (XIV. *infra*); TRUSTEE (XIV. *infra*); CHARITABLE TRUST (XIV. *supra*).

Trustee (XII. 346).—*Duties and Powers.*—Trustees are entitled to grant a new lease of minerals, where the tenants under a lease in existence at the opening of the trust give up the lease (*Dick's Trs.*, 1901, 3 F. 1021, 9 S. L. T. No. 96, 38 S. L. R. 744). Trustees appointed under the Act of 1867 have all the powers conferred by the trust-deed on the original trustees—including a power to appoint one of their number as law agent, and to remunerate him (*Allan's Trs.*, 1899 (O. H.), 7 S. L. T. No. 39). Where trustees hold estate for children in whom the fee is vested, but from whom payment is withheld until a future date, there being no direction to accumulate, they may make advances out of income towards the education of the beneficiaries (*Normand's Trs.*, 1900, 2 F. 726, 7 S. L. T. No. 416, 37 S. L. R. 517). A power to sell heritage does not include a power to excamb; the authority of the Court is necessary (*Bruce*, 1900, 2 F. 948, 8 S. L. T. No. 52, 37 S. L. R. 739). Power was granted to trustees to sell heritage (which they were directed by the trust-deed to hold) in these circumstances: there was no express prohibition of sale; the beneficiaries concurred; and a reporter was of opinion that the property was in a ruinous condition, and the trustees had no funds for its repair (*Fiddes's Trs.*, 1899 (O. H.), 7 S. L. T. No. 97).

Investments.—(See *Currie and Others*, 1901 (O. H.), 9 S. L. T. No. 141; *Patrick*, 1901 (H. L.), 3 F. 14, 38 S. L. R. 613; *Henderson's Trs.*, 1900, 2 F. 1295, 38 S. L. R. 976; *Lynch's Factor*, 1900, 2 F. 653, 37 S. L. R. 462). See also COLONIAL STOCK ACTS (XIV. *supra*).

Removal, etc.—*Resignation.*—Although trustees are equally divided upon a point of administration, the Court will not necessarily supersede them by the appointment of a judicial factor, unless there is a likelihood of a permanent deadlock, or that injury to the estate will be caused by the disagreement (*Yuill*, 1901, 3 F. 96, 8 S. L. T. No. 210. See also *Dick and Others*, 1899, 2 F. 316, 7 S. L. T. No. 277, 37 S. L. R. 232). But where trustees are guilty of negligent administration, careless book-keeping, and unduly protecting their own interests at the expense of the trust-estate (as in a litigation between them and certain beneficiaries), the Court will supersede them, for the time being at least, and appoint a judicial factor (*Hendersons*, 1901 (O. H.), 9 S. L. T. No. 11). Where three out of four trustees appointed by a testator refused to act along with the fourth, on the ground that he had interests conflicting with those of the trust, the fourth appointed two persons of good position to act along with him. In these circumstances the Court refused, on a petition by a beneficiary, to appoint a judicial factor (*Young*, 1901 (O. H.), 9 S. L. T. No. 13).

Tutor (XIII. 1).—A father who is suing, not for himself, but as tutor and administrator-in-law of his pupil child, may settle the action on such terms as he pleases; and the Court will not interpose on the ground

that the bargain is a bad one for the child (*Gow*, 1899, 2 F. 48, 7 S. L. T. No. 210, 37 S. L. R. 40). A mother of a pupil domiciled in a foreign country, being appointed its guardian in terms of the law of that country, is capable of granting a valid discharge to Scottish trustees in respect of sums due to the ward (*Elder*, 1902, 5 F. 307, 10 S. L. T. No. 293, 40 S. L. R. 178). Where the mother of pupil children, whose father died intestate, petitioned for the appointment of an Englishman to act along with her as tutor, the Court appointed him on condition of his granting a bond prorogating the jurisdiction of the Court of Session (*Sim*, 1901, 3 F. 1027, 9 S. L. T. No. 116, 38 S. L. R. 754). A curator *ad litem* having been appointed to pupil children in an action of reduction of a trust-deed, the Court ordered the trustees to put him in funds to consider the defence of the action (*Smith*, 1900 (O. H.), 8 S. L. T. No. 180).

Udal Law (XIII. 28).—A person may show a good title to property in the foreshore in Shetland without reference to any Crown Charter (*Smith*, 1903, 5 F. 680, 10 S. L. T. No. 470, 40 S. L. R. 562).

Usury : Usury Laws (XIII. 54).—See MONEY-LENDERS (XIV. *supra*).

Valuation.—See also RATING (XIV. *supra*); FIXTURES (XIV. *supra*).

Vesting in Succession (XIII. 64).—*Vesting of Rights ex lege*; Jus relictæ; Legitim.—In *Stewart*, 1902, 4 F. 657, the question was raised whether the right which vests in a widow *jure relictæ* is a third of the corpus of her deceased husband's moveable estate, or is only a claim for the money value of one-third of that estate as it stood at her husband's death. The Court found it unnecessary to determine the question, but Lord Moncreiff expressed an opinion, on consideration of the authorities, that, as a general rule, a widow is not, *jure relictæ*, entitled to the *ipsa corpora* of any particular assets of her deceased husband's estate. "It may be," he added, "that the executors of the deceased, if they hold shares, for instance, may be compelled, in satisfaction of the *jus relictæ*, to transfer some of them to the widow instead of realising them at a loss and paying her in cash. But that may be said to be a matter of trust management" (per Lord Moncreiff, in *Stewart*, *supra*, at p. 685). Where the executors of a deceased husband, whose estate consisted of the lease and stock of a farm, carried on the farm after his death to the end of the lease, with the result that the value of the estate increased, it was held by Lord Low, applying the rule recognised in *McIntyre*, 1865, 3 M. 1074, that the *jus relictæ* was one-third of the deceased husband's estate calculated on its value at the date of his death; but that the widow was entitled to interest from the date of her husband's death, and that 5 per cent. interest was to be allowed in respect the executors of the husband had held the widow's money at risk by trading with it. In *Allan*, 1901, 8 S. L. T. No. 370, it was held by Lord Kincairney that an *inter vivos* donation by a husband of his personal estate, with the object of defeating his wife's *jus relictæ*, was good at law, and effectual to prevent any right thereto vesting in the widow. His Lordship observed:

"It must be regarded as now settled law that the power of a husband to alienate his moveable estate by *inter vivos* deed, which wholly divests him of all power over the property disposed, and all benefit from it, is absolute and unqualified, and cannot be regarded as made *in fraudem* of the rights of his wife merely because it reduces her *jus relictæ* or deprives her of it altogether." In *Naismith*, 1898, 25 R. 899; 1899, 1 F. (H. L.) 79, a clause in a testamentary settlement, declaring the provisions made therein in favour of the testator's widow and daughter respectively to be in full of their legal claims, was held to relate exclusively to property passing by *mortis causâ* disposition from the testator, and to have no reference to, and not to affect, property which the testator had attempted to dispose of by will, and which had fallen into intestacy by reason of the death of the residuary beneficiaries, subsequent to the death of the testator, but before any right in the residue had vested in them. The result, accordingly, of the death of the residuary beneficiaries was that the residue devolved on the testator's heirs *ab intestato*, subject to the testator's widow and daughter acquiring, in addition to the provisions taken by them *ex testamento*, a vested interest in their *jus relictæ* and *legitim* respectively out of such estate as fell into intestacy. This decision was followed in *Moon's Trs.*, 1899, 2 F. 201, and in *Farquharson*, 1900, 2 F. 863. In the latter case, a child who took a provision under her parents' settlement was held to be entitled, in addition, to *legitim* out of provisions which had fallen into intestacy through the death of the legatees to whom they were destined (*Farquharson*, 1900, 2 F. 863). On the other hand, where a wife in an ante-nuptial marriage-contract had accepted the provisions therein made in her favour in full satisfaction of her legal claims, she was held not entitled to claim *jus relictæ* out of the estate of her husband, on his dying intestate (*Sim*, 1902, 4 F. 944).

Testaments and Marriage-Contracts—Cardinal Rule of Interpretation—Intention of Testator.—"It is always to be remembered that the rules of construction applicable to wills are only presumptions—presumptions which may or may not be guides to the true interpretation of the testator's meaning, but which would certainly be misleading if applied in too absolute a manner" (per Lord McLaren, in *White*, 1900, 2 F. 1170, at 1173).

Express Provision as to the Date of Vesting.—In *McKay's Trs.*, 1903, 5 F. 1086, there was an express declaration in the will that the shares of residue "shall not vest until the respective terms of payment." The estate was subject to a liferent in favour of the truster's widow, terminable on her death or second marriage. Upon the happening of either of these events, the residue was to be paid to the truster's children who should survive him, equally, in the case of sons, on majority, and in the case of daughters, on majority or marriage. The Court, taking the view that, on a natural construction, the words "respective terms of payment" had reference to the period at which the children respectively attained majority or were married, gave effect to the testator's declaration as to the date of vesting, and held that though the liferent continued to subsist, a son's share vested in him on his attaining majority—payment alone being deferred until the termination of the liferent.

In *Macfarlane's Trs.*, 1903, 41 S. L. R. 164, at p. 170 (narrated *infra*, p. 89), Lord McLaren, with reference to a declaration in a testamentary settlement that the beneficiaries should have no vested interests in the provisions, observed: "I do not attach very much importance to such declarations, and there is authority for saying that a declaration as to vesting is not decisive, because the word 'vesting' is ambiguous. It may

be used by the testator in the sense, and I think in this case it was used in the sense, that no child should have such a specific vested interest as would interfere with the power given to the trustees to limit or exclude his share. It was evidently for this purpose that the declaration was made, but that declaration is quite consistent with there being a vested general right to such shares as the trustees may think suitable" (*i.e.* in exercise of a power of apportionment), "or, failing that, to equal shares."

Presumption in favour of Vesting a morte testatoris—Postponement of Payment to Event Certain—Liferent.—The recent cases, illustrative of the general rule that testamentary bequests are presumed to vest *a morte testatoris*, and that the mere postponement of the period of payment till the death of a liferenter, or other *dies certus*, does not suspend vesting, have been numerous and need not be specified. In the case of bequests to a class, such as "children" or "issue," subject to a right of liferent in another, the machinery of a trust being interposed, the principle of *Carleton*, 1867, 5 M. (H. L.) 151, that vesting in the class takes place *a morte*, and is not postponed till the death of the liferenter, unless the terms of the deed are such as to exclude that construction, has been reaffirmed in *Hickling's Trs.*, 1898, 1 F. (H. L.) 7—*vide præsertim*, per Lord Shand, at p. 14, *et seq.* The recent cases as to the vesting of a bequest to a class, where the bequest is dependent on a contingency—turning, as they do, mainly on the question whether the contingency is applicable to the class or to the individuals composing the class—are dealt with *infra*, *sub voce Vesting in a Class—Survivorship*.

With regard to the effect of a gift to one person of both a liferent and a power of disposal, recent cases have followed the principle stated by Lord Justice-Clerk Inglis in *Alres' Trs.*, 1861, 23 D. 712, at p. 717, that in order that a right of liferent and a power of disposal, taken together, may amount to a fee, both must be in unqualified terms. In *Rattray's Trs.*, 1899, 1 F. 510, it was held that, both the gift of liferent and the power of disposal being absolute in character, the provision amounted to a fee—this being the first case presented for decision in which this result was arrived at. On the other hand, in *Douglas' Trs.*, 1902, 5 F. 69, and *Reid*, 1899, 1 F. 969, the power of disposal being limited to disposal *mortis causâ*, the beneficiary's right was construed as merely a right of liferent. Where, in an ante-nuptial contract of marriage, the wife had a liferent of the whole estate which belonged to the husband at his death, with power to her, in case of failure of children, to test upon or execute conveyances *inter vivos* or settlements *mortis causâ* of the estate, so as to sopite a destination in the deed to the husband's "heirs whomsoever," it was held, the husband having died without issue, and his widow not having exercised any of the powers conferred on her, that she had only a right of liferent with power to convert it into a right of fee, and that, she not having done so, the fee devolved on the "heirs whomsoever" of the husband at the date of his death (*Howes' Trs.*, 1903, 5 F. 1099).

With regard to the effect of a mere gift of the income of moveable estate to a beneficiary without any disposition of the capital, it has been held that the rule in English law that, in these circumstances, a conveyance of the capital to the beneficiary is implied, does not exist in Scotland. "It may be that, without express words of conveyance or gift of capital, it may appear that the intention of the testator was to bequeath it, but there is no technical rule to that effect" (per the Lord President in *Sim*, 1900, 2 F. 434, at 437). "I venture to think that the question is entirely one of intention, as to whether words importing an absolute unqualified

gift of the income of moveables do or do not carry the capital" (per Lord McLaren in *Sim*, *supra*, at p. 438).

For further cases on the terms of testamentary provisions sufficient to carry a fee, *vide infra*, *Directions to Trustees*, pp. 87, 88.

Direct mortis causa disposition of Heritage to Grantees.—In *Edmond*, 1898, 1 F. 154, the proprietor of lands executed a disposition of the lands to his son *nominatim* in liferent, for his liferent use only, and "after his death" to the holders of certain offices, and their successors in office, as trustees. The granter recorded the disposition in the books of Council and Session. After the granter's death, his son, who was his heir-at-law, brought an action of declarator that he was entitled to the fee of the lands, as heir-at-law of his father, upon the ground that there was no gift of the fee of the lands to the trustees until the pursuer's death, and that, as the fee could not be *in pende*nte, the pursuer, as heir-at-law of his father, took it. It was held that the disposition, being testamentary, took effect on the granter's death and constituted a valid disposition of the lands to the son in liferent and the trustees in fee.

In reference to an argument that, under sec. 20 of the Titles to Land Consolidation Act, 1868, words, in a testamentary disposition, sufficient to carry moveables, were now sufficient also to carry heritable estate, Lord McLaren, in *Sim*, 1900, 2 F. 434, at p. 438, observed: "It by no means follows that language which, when applied to moveable estate, would establish in a liferenter the rights of a fiar, will necessarily have the same effect as to heritage."

Contingency in Time and Event:—(a) *Majority or Marriage.*—In *White*, 1900, 2 F. 1170, the distinction between the effect, as regards vesting, of a condition of majority annexed to a gift, and a similar condition annexed to a direction to pay, was accepted as sound. Nevertheless, in that case, although there was no direct gift of the fee, but merely directions to trustees to pay the annual income of a specified sum to the beneficiary during her pupilarity, and to pay over the capital to her on her "attaining her majority," it was held—the beneficiary having died before attaining her majority—that the legacy vested *a morte testatoris*. The ground of the decision was that the form of the trust-directions was due merely to the desire of the testator that the income and capital should reach the legatee in the manner most beneficial and suitable to her. Lord McLaren stated that, in his opinion, "there is a very strong presumption, where income is given unconditionally to the legatee, that a direction to pay at majority is to be regarded as merely an administrative direction, for the two rights of income and eventual fee are given to the same person, and in the case supposed no other person is mentioned in the bequest as having any interest."

The ordinary rule, *dies incertus pro conditione habetur*, was applied to the effect of postponing vesting in *Ross' Trs.*, 1902, 4 F. 840; *Cattunach's Trs.*, 1901, 4 F. 205; *Neill's Trs.*, 1902, 4 F. 636; *Watson's Trs.*, 1902, 4 F. 798; *Graham's Trs.*, 1899, 2 F. 232.

On the other hand, in *Normand's Trs.*, 1900, 2 F. 726, the condition of attaining majority was construed as being consistent with vesting at the death of the liferentrix, and effectual only to postpone payment until majority. As to the effect of a condition of attaining majority, annexed to a bequest to a class, *vide infra*, *Vesting in a Class*.

(b) *Words of Survivorship.*—The principle of *Young*, 1862, 4 Macq. 314, that words of survivorship are to be taken primarily as referring to the period of distribution, so that vesting is postponed to that period, has

been followed in a series of cases (*e.g.*, *Begg's Trs.*, 1899, 1 F. 498; *Wilson's Trs.*, 1901, 3 F. 967; *Ganden's Trs.*, 1902, 10 S. L. T. No. 215). In *Bowman*, 1900, 2 F. 624, the residue, after the expiry of a liferent, was to be paid to the testator's nephews and nieces "equally among them, share and share alike," it being declared that the share of any predeceasing nephew or niece should "go and accresce to the survivors." A nephew having predeceased the testator without issue, and a niece having survived the testator but predeceased the liferenter, leaving a daughter, it was held that the form of the bequest to the nephews and nieces effected a severance of the interests given them in the residue so as to prevent accretion from taking place *ex lege*, and, that being so, that the daughter of the niece predeceasing the liferenter was entitled to her mother's original share, in virtue of the *conditio si institutus sine liberis decesserit*, but that, in respect of the survivorship clause, she was not entitled to participate in the lapsed share of the nephew who predeceased the testator. In *Sword's Trs.*, 1902, 4 F. 1005, a direction in a trust-settlement, to pay after a certain event, lapsed shares of residue "to and equally among my other residuary legatees and their lawful issue," was construed as being "in effect and substance a survivorship clause, so that vesting was postponed until that event."

In *Alston's Trs.*, 1902, 4 F. 654, the presumption that a clause of survivorship had reference to the period of distribution (in this case the expiry of a liferent), was held to be excluded by a clause in which "the date of my death" was declared to be the event on which the provision of a beneficiary was to "fall and belong" to him. Looking to the terms of this clause, the Court took the view that the clause of survivorship must be read as referring to the date of the testator's death, and not to the expiry of the liferent, with the result that all the testamentary provisions were held to vest *a morte testatoris* (*cp. McDougal's Trs.*, 1902, 39 S. L. R. 375; *Cairns' Trs.*, 1902, 10 S. L. T. No. 239; *Webster's Trs.*, 1900, 2 F. 695).

"It is perfectly settled law that a right which is not vested at the testator's death may become vested at some intermediate period prior to payment, in consequence of the members of the destination being reduced by deaths to a sole survivor" (per Lord McLaren in *Thompson's Trs.*, 1900, 2 F. 470, at p. 481).

Directions to Trustees, suspensive of Vesting.—The recent cases under this category are, most of them, cases in which, in the words of Lord McLaren (*Mackay's Trs.*, 1897, 24 R. 904), "the primary gift is so qualified as to show that no higher right is meant to be given than is more fully explained in the sequel" of the trust-deed. In *Young's Trs.*, 1901, 3 F. 616, a direction to trustees to "hold and apply" the estate for the use and behoof of the truster's younger children, *nominatim*, under the burden and condition, *inter alia*, that the share falling to M., one of the younger children, should be held by the trustees for behoof of M. in liferent, and should belong to M.'s issue in fee, was held to be inconsistent with M. having a vested fee in her share, even on her death without issue. Again, in *Turnbull's Trs.*, 1900, 2 F. 1183, where the trustees were directed to hold the residue for behoof of the issue of a son of the testator, with declarations (1) that it should not vest in such issue during the subsistence of certain liferents, nor until such issue should attain majority respectively, and (2) that the trustees should have power, if they thought fit, to limit the interest of any beneficiary to a liferent of his share, and to suspend the vesting of the fee of such share, it was held—the trustees having, in the exercise of their power, and prior to the beneficiary attaining majority, restricted the interest of one of the beneficiaries to a liferent, and suspended

the vesting of the fee in him—that no fee vested in him, and that his right was merely one of liferent. In both these cases the argument for vesting, based on *Lindsay's Trs.*, 1880, 8 R. 281, and *Dalglish's Trs.*, 1889, 16 R. 559, was rejected, and the argument, based on *Muir's Trs.*, 1895, 22 R. 533, that the directions were inconsistent with vesting, was sustained. Where a testator in his settlement left the fee of a portion of his estate to his son, but, by a codicil added some years later, directed his trustees to retain the portion originally destined to his son, and to pay the income thereof to him for his liferent use alienably, declaring this provision strictly alimentary, but giving the son power to dispose at his death of the capital of the portion in question, the Court took the view that the directions to the trustees in the codicil constituted a revocation of the gift of the fee in the settlement, and accordingly held that no fee vested in the son, but that he was entitled only to an alimentary liferent of the portion in question, with power to dispose of the fee thereof by testament (*Miller Richard's Trs.*, 1903, 5 F. 909). Again, where a testatrix directed her trustees to hold three portions of her estate for her three daughters, one-third for each, and pay them the income of said portions, declaring that, while they should “have no power to obtain payment” of their shares, they should have power to bequeath the same in such way as they might think fit, it was held—although there was no disposal of the fee of the daughters’ shares in the event of their not exercising their power of bequest—that the directions were inconsistent with the daughters having a vested right of fee (*Peden's Trs.*, 1903, 5 F. 1014). In a similar case, a testator conveyed his whole estate to trustees, and directed them, *inter alia*, to invest £1000 in their own names for behoof of his daughter, and to pay the interest thereof to her “for her maintenance and support during her life,” the *jus mariti* of her husband, in the event of her marriage, being excluded therefrom. It was further provided that, if she died unmarried, the £1000 in question should form part of the residue of the estate, “but should my said daughter be married, said sum of £1000 shall on her death be paid to her heirs and assignees.” After the daughter had married and become a widow, it was held that, in respect the primary purpose of the testator was to secure, by a trust, payment to her of the interest on the £1000 for her maintenance during her life, the direction as to the disposal of the capital at her death did not have the effect of giving her a fee during her lifetime to the subversion of the primary purpose (*Douglas' Trs.*, 1902, 5 F. 69). In *Baird's Trs.*, 1903, 5 F. 472, the original gift was in the form of a direction to “divide and apportion” the residue of the trust-estate between the truster’s two daughters *nominatim* equally. But subsequent directions to the trustees to “hold” the daughters’ shares for their liferent use alienably, and, on the death of each of the daughters, to pay her share to her children in such proportions as the daughter might fix by writing under her hand, and, failing children, to dispose to the daughter’s nearest heirs, were held to so qualify the original gift as to cut down the right of the daughters to a liferent only of one-half each of the residue.

In *Gifford's Trs.*, 1903, 5 F. 723, the truster declared that the surplus residue should “belong” to his son in liferent, and to his issue in fee, whom failing, to unmarried nieces of the truster. In other parts of the settlement, provision was made for a continuing trust. The son had no issue till after the truster’s death. The majority of the whole Court, rejecting the argument, founded on *Frog's Creditors*, 1735, M. 4262, that the disposition was to be construed as conferring a right of fee on the son with a right to immediate payment, held that the testator’s intention

was that his son's right should be limited to a liferent, and that the trustees were bound to hold the said surplus residue, until the death of the son, for behoof of his issue, whom failing, for the truster's unmarried nieces.

Directions not suspensive of Vesting:—(a) Consistent therewith.—In *Gillies' Trs.*, 1900, 3 F. 238, although there was no direct gift of capital, but merely a direction to hold a share of the residue, "for behoof of" X. and his children, the interest thereof to be paid one-half to X., and one-half to his children, yet, in respect of a subsequent direction to the trustees, if X. and his children "stand in need thereof . . . to expend the capital of said share for and in behalf of" X. and his children, it was held that there was a gift of the fee of the share, to the extent of one-half, to X., and, to the extent of one-half, to his children, which vested *a morte testatoris*. The settlement in this case contained a clause instituting the children of X. in the event of X. "dying before the division of the residue," as well as a clause of survivorship, but it is to be observed that these clauses had clear reference to the death of two annuitants who predeceased the testator, so that, in the events which occurred, these clauses were *pro non scripto* in determining the date of vesting (cp. *Dunlop's Trs.*, 1899, 1 F. 722).

In *Macfarlane's Trs.*, 1903, 41 S. L. R. 164, the trustees were given very extensive powers, *e.g.*, power to exclude one or more of the beneficiaries, the testator declaring that it was his intention to give his trustees the same powers in apportioning, withholding, or dealing with the shares of the beneficiaries, as he himself could have exercised if he were in life. There was, further, a declaration that the children should have no vested interest in the provisions in their favour, but should be in the matter of these provisions entirely under the control of his trustees. Nevertheless, the trustees, after the death of the testator, having, in exercise of their powers of dealing with the shares, ordered by minute that a certain share of the funds should be apportioned and set apart for one of the beneficiaries, the share thus set apart to be invested for the beneficiary in question, and the annual interest to be paid to him as alimentary income, it was held that the restrictions in the minute on the right of the beneficiary were consistent with his having a vested interest in the share apportioned to him in the minute, and, accordingly, that he could, after the date of the minute, effectually test on the share in question.

Where the fee of a fund is given to a class of persons with a power to another person to apportion that fund among them, it is incompetent so to exercise the power of apportionment as to reduce the fee so given to a mere liferent, and any such attempted exercise of the power of apportionment is invalid (*Warrand's Trs.*, 1901, 3 F. 369; *Mathews Duncan's Trs.*, 1901, 3 F. 533; *Neill's Trs.*, 1902, 4 F. 636).

Directions to Trustees not suspensive of Vesting:—(b) Repugnant to the vested Right.—The rule must be taken as now established, that it is incompetent to give a vested fee to a beneficiary of full age, and, at the same time, to restrict the rights of, or protect, the beneficiary, or to control his management of the estate which has vested in him. Even where the expression of the testator's intention to restrict the beneficiary's enjoyment or control is distinct, and is coupled with the constitution of a continuing trust as the appropriate machinery to carry his intention into effect, the directions to the trustees to retain the capital of the vested provision, and to pay the income to the beneficiary, or to apply the capital or income in some way for his benefit, are inconsistent with, or repugnant to, the right of fee.

The beneficiary in such circumstances is entitled to require the trustees to denude in his favour, and any direction of the testator to the contrary cannot receive effect (*Yuill's Trs.*, 1902, 4 F. 815; *Johnston*, 1903, 40 S. L. R. 757; *Rattray's Trs.*, 1899, 1 F. 510; *Hargreave's Trs.*, 1900, 3 F. 14; *Ross' Trs.*, 1902, 4 F. 840; *Coats' Trs.*, 1903, 5 F. 401). The rule is excluded where there is an ulterior trust purpose to be served which cannot be secured without the retention of the vested estate in the hands of trustees, or where the trustees have power to divest the beneficiary of his vested right or to restrict his right to a liferent. The application of the rule, and the scope of the exceptions, as illustrated in recent decisions, are dealt with *infra*, *sub voce Relief from Trust-Management*, p. 94.

Grant of Liferent with destination over of Fee—Effect of Conditional Institution of "Issue" or "Heirs."—The opinions expressed by Lord Watson and Lord Davey in *Bowman's Trs.*, 1 F. (H. L.) 69, at p. 72 and p. 77, to the effect that a destination to the heirs or issue of the institute is, in the absence of indications of a contrary intention, suspensive of vesting, have been considered by the Courts in a series of cases. In *Thompson's Trs.*, 1900, 2 F. 470, the testator directed his trustees to invest £3500, and pay the annual interest thereof to his daughter H., and in the event (which happened) of H. dying without issue, to pay that sum to his son R. "and his heirs or assignees." R. and H. both survived the testator, and R. predeceased H. Seven judges held that the destination to R. "and his heirs or assignees" did not suspend vesting in R., but that the fee vested in him *a morte testatoris*. Three judges held that the effect of the destination was to suspend vesting until the death of H.; and two judges, that its effect was to suspend vesting during the joint lives of R. and H. Lord Kincairney, who was one of the majority, stated that on a construction of the destination *per se* he would have reached the last-mentioned conclusion; and several other of the judges who were in the majority proceeded on the ground that, while, on the authority of the dicta in *Bowman's Trs.* (*supra*), a destination to "heirs" of the institute was an element pointing to the suspension of vesting, a destination to "heirs or assignees" was not to be construed as having that effect. In reference, however, to the last-mentioned opinion, it is worthy of note that, in *MacLeod*, 1903, 41 S. L. R. 130, in a disposition and settlement by a mother, disposing her whole estate to her daughter, "and her heirs and assignees whomsoever absolutely," and reserving her own liferent, it was held that, the deed being testamentary, the destination was a proper conditional institution of the daughter's heirs, so that, on the death of the mother, predeceased by the daughter without issue, the heirs of the predeceasing daughter took the estate, and not the heirs of the mother *ab intestato*. In *Matheson's Trs.*, 1900, 2 F. 556, where the testator's direction was to hold the estate for the liferent use of his widow, and, after her death, to divide it among his children, *nominatim*, equally, share and share alike, "declaring that in the event of the death of any of my said children leaving lawful issue before the said division takes place, the said issue shall succeed to their predeceasing parent's share," it was held by the Second Division that the conditional institution of the issue of children did not prevent vesting *a morte*. Lord Moncreiff, who gave the only opinion, declined to construe the dicta in *Bowman's Trs.* (*supra*) as overruling the previous current of authority to the effect that a destination in favour of the issue or heirs of an institute, although in form a conditional institution, yielded readily to indications or presumptions pointing to vesting *a morte testatoris* in the parent or ancestor; and he found such an indication in the fact that, as the

children were named, and there were no words which would involve accretion in the event of any of the children predeceasing the liferentrix without issue, the result of holding vesting to be postponed would be partial intestacy, in the event of a child predeceasing the period of payment, without issue (cp. *Taylor's Trs.*, 1903, 5 F. 1010; *Ogle's Trs.*, 1904, 41 S. L. R. 284; and contrast *Sword's Trs.*, 1902, 4 F. 1005, where there were words conferring a right of accretion, which were construed as in effect and substance a survivorship clause—all of which were cases in the Second Division). On the other hand, in *Parlane's Trs.*, 1902, 4 F. 805, where the testator provided that on the death of his son D. his estate should be divided and paid to and among his other children equally, share and share alike, "declaring always that the issue of any of them predeceasing the period of payment to be entitled equally to the share which would have fallen to their parent," it was held by the First Division that vesting was suspended by the conditional institution of issue until the date of payment. In this case, Lord McLaren—whose judgment in *Hay's Trs.*, 1890, 17 R. 961, for the first time clearly formulated the rule which was commented on by Lord Watson and Lord Davey in *Bowman's Trs.* (*supra*)—observed: "According to the latest and most authoritative decision regarding the vesting of rights subject to a conditional institution in favour of issue, the contingent rights of the issue of the immediate legatees have the effect of suspending the vesting of the estate until the period of payment, unless there be something in the context of the will which indicates that the testator intended the vesting to take place at an earlier period" (per Lord McLaren in *Parlane's Trs.*, 4 F. 805, at 808; cp. *Murray's Trs.*, 1900, 8 S. L. T. No. 228, and *Garden's Trs.*, 1902, 10 S. L. T. No. 215, in which latter case Lord Stormonth Darling held that a direction to trustees to divide a trust-estate on the expiry of a liferent among the children of X., "and their descendants," postponed vesting until the death of the liferenter). In *Gavin's Trs.*, 1901, 4 F. 278; 1903, 40 S. L. R. 879, the trustees in an ante-nuptial contract of marriage were directed to pay the annual proceeds of the estate conveyed to them by the wife and her father, to her, and after her death, in the event of her being survived by her husband, to him, and on the death of both spouses to pay over the capital to the children of the marriage, with a declaration that if any child should die before the said provision should have been paid or become payable, leaving issue, said issue should have right to their parents' share. The wife died survived by her husband and one daughter of the marriage. Lord Davey emphatically reaffirmed the opinion expressed by himself and Lord Watson in *Bowman's Trs.* (*supra*), and held that, in respect of the destination over to the issue of the daughter of the marriage in the event of her dying before the period of payment, the fee of the trust-estate could not vest in the daughter of the marriage before the period of payment, namely, the death of her father. Lord Shand and Lord Robertson reserved their opinion on the point.

Vesting subject to Defecancec.—In *Gardner*, 1900, 2 F. 679, two sisters, by *inter vivos* deed addressed to three brothers, declared that certain bank stock (purchased by the joint contributions of the brothers and sisters) standing in the sisters' names, was held by them in trust (1) for their parents and the survivor of them in liferent; (2) after the death of their parents, for the liferent of the sisters jointly, and the survivor of them, "subject to which liferents the fee of said stock shall fall and belong" one-half to the children of each sister, and "failing our having children, the fee of said stock shall fall and belong to you our brothers equally, or the survivor of you." After the death of the parents, the sisters (neither of

whom married) and the survivor of them enjoyed the life^{ten}erent. All the three brothers predeceased both the sisters. It was argued that the trust had failed, and that the principle of vesting subject to defeasance was inapplicable in respect of the condition of survivance as between the brothers, and the contingent right given to issue of the sisters. In spite of the fact that, owing to these contingencies, the person in whom the vesting was to take place was unascertainable at the date of the deed, the Court, construing the deed as if it were a joint settlement by the brothers and sisters, held that, on the death of the second brother, the fee had vested in the last surviving brother, subject to defeasance in the event of the sisters having children. At the same time, Lord McLaren observed: "I am not in favour of the extension of the principle of vesting subject to defeasance to cases of a different character from that to which it has been applied. It is not a mode of construction which can be legitimately applied to a destination which is subject to a condition of survivorship or of attaining a certain age. The application of the principle is limited to cases where there is no existing object between a claimant and his right, but where there is only a possibility of some one coming into existence." Cp. the opinions of the judges in the majority in *Thompson's Trs.*, 1900, 2 F. 470; also *McDougal's Trs.*, 1902, 39 S. L. R. 375. In *Corbett's Trs.*, 1901, 3 F. 963, the principle of vesting subject to defeasance was held to be inapplicable, upon the ground that a contingency of survivorship together with a destination over to issue, rendered it impossible to ascertain the person or persons to whom the fee was given until the death of the last survivor of three life^{ten}erenters.

Vesting in a Class.—The law on this subject has been to some extent modified by the decision of the House of Lords in *Hickling's Trs.*, 1898, 1 F. (H.L.) 7, where effect was given to the principle that where a gift is made to the issue of a life^{ten}erent contingent upon the life^{ten}erent leaving issue, the condition is purified by the life^{ten}erent being survived by any one of his issue, with the result that the benefit accrues to all the members of the class, including those who were alive at the date of the testator's death, but who predeceased the life^{ten}erent. See observations by Lord Kincairney on this decision in *Crichton's Trs.*, 1900, 8 S. L. T. No. 149. In *Scott's Trs.*, 1900, 2 F. 516, the trust-directions were to "invest and settle" a specified sum in such manner as to secure the life^{ten}erent to X., and the fee to his children, and, failing X., the capital was to revert to the truster's own next-of-kin. These directions were construed as constituting a gift of the fee of the sum in question to the children of X., the life^{ten}erent, and at the same time were held to be consistent with vesting *a morte testatoris*—the effect, as explained by Lord Adam, being that "if there were none of the class in existence when the legacy was to be settled, *i.e.* the death of the testator, then the trustees would continue to hold the legacy until it should be seen whether any of the class came into existence. But when a child was born, and the class came into existence, then the legacy would vest in him, subject to participation with others of the class as they respectively came into existence" (cp. *Steel's Trs.*, 1902, 5 F. 239; *Matheson's Trs.*, 1900, 2 F. 409; *Sword's Trs.*, 1902, 4 F. 1005; *Ogle's Trs.*, 1904, 41 S. L. R. 284). In *Simpson*, 1900, 2 F. 447, a testator directed his trustees, upon his death, to convey certain heritable subjects to his daughter in life^{ten}erent, and to her issue in fee. It being clear that the fee vested *a morte*, the trustees acted on the view that the fee was destined to such issue of the testator's daughter as were alive at his death, and to them only, thereby excluding a grandson of the testator, born after the testator's death. It was held, however, that, the destination being to the issue as a class, the grandchild *post-natus* was

entitled to a share, he being within the class. Lord Trayner observed that the direction to the trustees to execute the conveyance "on my death" pointed out merely the time when the conveyance was to be granted, not the persons to whom it was to be granted. No conveyance, of course, could be granted at the appointed time in favour of the grandchild *post-natus*, *nominatim*, because he had no existence, but a conveyance could quite well be granted in accordance with the terms of the testator's direction, under which the *post-natus* would take benefit when he did come into existence, for a conveyance to the daughter in liferent and her issue in fee would constitute a fiduciary fee in the liferentrix for behoof of her whole issue, or it would create a fee in any of her children named in the conveyance for their own behoof, and a fiduciary fee for any of the same class who afterwards were born. On these grounds, Lord Trayner distinguished the case from the cases of *Wood*, 1861, 23 D. 338, and *Ross*, 1878, 5 R. 833.

The effect of a condition, *e.g.*, majority or marriage, attached to a gift to a class, in determining the members of the class entitled to participate, is illustrated in several recent decisions. Thus, in *Wilson's Trs.*, 1901, 3 F. 967, there was a gift to the issue of a liferenter, contingent not only on the liferenter leaving issue, but also on such issue attaining majority. Certain children of the liferenter survived him and attained majority. In these circumstances, the representatives of a child of the liferenter, who had predeceased his father after attaining majority, maintained, founding on *Hickling's Trs.* (*supra*), that a share of the gift to the issue had vested in the predeceasing child. It was held, however, that having regard to the personal nature of the condition as to majority, the gift did not vest in the issue as a class, and that only those members of the class were entitled to participate who fulfilled both conditions, *i.e.* both survived the parent and attained majority. In *Neill's Trs.*, 1902, 4 F. 636, there was a direction to trustees to hold and convey funds for the truster's daughter in liferent, and, on her death, to her children in fee, equally, upon their respectively attaining the age of twenty-one years, with a destination over to other children of the truster, in the event of the daughter dying without leaving issue or of her dying leaving issue, but of such issue not surviving to take in terms of the destination. The daughter died leaving three sons. It was maintained, founding on *Hickling's Trs.* (*supra*), that vesting took place in the daughter's three sons as a class upon the eldest son attaining majority. This contention was rejected, and it was held that vesting took place in each son only on his attaining majority. It will be observed that in both these cases the decision in *Hickling's Trs.* (*supra*) was not construed as involving the acceptance of the rule of English law, that in a gift to a class on the members of the class reaching majority, the date of vesting is the date at which the eldest of the class attains majority, all the members of the class in existence at that date being entitled to participate. Where trustees were directed to hold the funds for behoof of the testator's children equally, to vest in them at the age of thirty, and the issue of any who might predecease that age to take their parents' share, it was held that the share of a son who died before reaching the age of thirty, leaving issue, vested in his issue at his death (*Cattanach's Trs.*, 1901, 4 F. 205).

In *Normand's Trs.*, 1900, 2 F. 726, the direction to the trustees was to hold a specified sum for behoof of certain grandchildren of the testator in liferent, and upon the death of any one of their grandchildren, or at any later "period of division," which he or she might appoint, to pay over his or her share of the fund "to or among his or her children, when and as they arrive at majority or are married, whom failing to his or her assignees,

whom failing to my own nearest heirs." On the death of a grandchild, leaving issue, without appointing a period of division, a question arose as to the date of the vesting of his share in his issue. The destination over prevented vesting *a morte testatoris*, but the Court held that, in respect the testator contemplated one period of division only, the death of the grandchild was to be taken as the period of division contemplated, and that the share vested in the deceased grandchild's children existing at that date, and was not postponed until they successively attained majority or were married.

Effect of Unforeseen Events.—The principle, recognised in *Harrey's Judicial Factor*, 1893, 20 R. 1016, and *Taylor's Trs.*, 1893, 20 R. 1032, that the divorce of one of the spouses is not equivalent to his or her death in a question as to the vesting of provisions in a marriage-contract in the children of the marriage, has been affirmed in *Gavin's Trs.*, 1901, 2 F. 278; 1903 (H. L.), 40 S. L. R. 879. In that case the marriage was dissolved by decree of divorce, on the ground of desertion, obtained by the wife against her husband, and, in the House of Lords, it was assumed for the purposes of the case that the daughter of the marriage had a vested fee in the trust-estate payable on the death of her father, the surviving spouse, but it was held that, in a question as to the daughter's rights under the marriage-contract, the decree of divorce was not equivalent to the death of the divorced spouse; that therefore nothing was payable to the daughter as long as her father was alive; and that the income, which, but for the divorce, would have been payable to the father during his survivance, fell into the executory estate of the deceased wife.

Where, under a trust-settlement, X., one of the sons of the truster, was given a liferent of a "share" of the residue—construed by the Court as an aliquot share—the trustees being directed on the son's death (until which event there was to be no vesting) to pay the capital of the share to X.'s children, whom failing to his other next-of-kin, and there was a declaration that any child of the truster who repudiated the settlement and claimed his legal provisions, should forfeit all right under the settlement, the share of such child going to the other children who should abide by the settlement, it was held that, on X. claiming his *legitim*, he forfeited not only his own rights under the settlement, but also those of his issue or other next-of-kin (*McCull's Trs.*, 1900, 3 F. 222).

As to the effect on the testamentary provisions of a deceased husband of the election by his widow to take her legal rights instead of the liferent provided to her by the settlement, *vide Cairns*, 1901, 3 F. 545, and *praesertim* observations, per Lord Low (at p. 551), on the effect of the judgment in *Muirhead's Trs.*, 1890, 17 R. (H. L.) 45.

Relief from Trust-Management—Anticipation of the Period of Payment.—In *Yuill's Trs.*, 1902, 4 F. 815, the testator directed his trustees, on the expiry of a liferent, to divide his estate among the children of his brothers and sisters, and to retain in their own hands the shares destined to the children of his sisters, and to pay to them neither the capital thereof nor the revenues (which were to be accumulated) so long as their fathers were alive. It was held by a majority of the whole Court that the sisters' children had an unqualified right of fee in their shares, and were entitled to demand payment thereof, notwithstanding that their fathers were alive. The case was referred to the whole Court "with special reference to the decision in the case of *Miller's Trs.*," 1890, 18 R. 301, and the judgment was practically an affirmation of the principle of that decision, namely, that "when a vested unqualified and indefeasible right of fee is given

to a beneficiary of full age, he is entitled to payment of the provision, notwithstanding any direction to the trustees to retain the capital of the provision, and to pay over the income periodically, or to apply the capital in some way for his benefit" (per the judges of the First Division in *Yuill's Trs. (supra)*). In the cases subsequent to *Miller's Trs.*, the Courts had shown some reluctance to adopt the principle of that decision, and the judgments were conflicting and seldom unanimous (e.g., *Bullantyne's Trs.*, 1898, 25 R. 621; *Hargrave's Trs.*, 1900, 3 F. 14); but since the decision in *Yuill's Trs. (supra)*, the principle of *Miller's Trs.* may be taken as established (per Lord Davey in *McCulloch's Trs.*, 1903, 41 S. L. R. 88). Illustrations of the circumstances in which the principle is applicable will be found in *Rattray's Trs.*, 1899, 1 F. 510; *Hargrave's Trs.*, 1900, 3 F. 14; *Ross' Trs.*, 1902, 4 F. 840; and *Coats' Trs.*, 1903, 5 F. 401.

The rule of *Miller's Trs. (supra)* is inapplicable where there are "trust purposes" to be served which cannot be secured without the retention of the vested estate or interest of the beneficiaries in the hands of the trustees. In such a case, the right of the beneficiary to payment must be subordinated to the will of the testator (per the judges of the First Division in *Yuill's Trs. (supra)*). The difficulty in each case is to determine what constitutes an ulterior "trust purpose," warranting the retention by trustees of capital vested in beneficiaries, or, in other words, preventing the operation of the rule of *Miller's Trs.* In *Miller Richard's Trs.*, 1903, 5 F. 909, Lord Moncreiff expressed the view that it must now be held that "in order to warrant retention where a fee is given, the trust purposes must be connected with other objects and persons than the beneficiary whose share is in question; and that if the purposes are concerned solely with the management of the estate or bequest, and the protection of the beneficiary against his own improvidence, they must be entirely disregarded, and immediate payment must be made to the heir free of all restrictions." An illustration of trust purposes which render it necessary for trustees to retain in their own hands an estate or interest which has vested in beneficiaries, is found in *McCulloch's Trs.*, 1900, 2 F. 749; 1903 (H. L.), 41 S. L. R. 88. In that case, the testator directed his trustees to hold his estate for his children in life, and equally among them and their issue in fee, and, on the death of all his children, to divide the estate among the children of his sons and daughters *per stirpes*, declaring that, if any of his children died leaving issue, such child's share of the income should belong to such issue. While two of the testator's children were still alive and had issue, the son of a deceased child of the testator claimed payment of a *pro indiviso* share of the estate which, it was admitted, was vested in him. It was held, however, that he was not entitled to payment thereof before the date fixed by the testator for realising the estate, in respect that the testator did not contemplate the severance of the estate into aliquot portions prior to the date of realisation, but intended that the estate should remain *in globo* till the death of all his children, and that the payment of an aliquot portion to the claimant, prior to that event, might prove prejudicial to the interests of the other beneficiaries. Lord Davey, while expressing an opinion that *Miller's Trs. (supra)* was decided upon a sound principle, pointed out that that principle was inapplicable where the share of the estate to which a beneficiary was entitled could not, according to the direction of the will, be ascertained until the arrival of the time at which the testator had directed the share of the estate to be ascertained. Again, in *Graham's Trs.*, 1899, 2 F. 232, a direction to the trustees to pay certain beneficiaries

interest on the amount of their bequests at the rate of 4 per cent. for some years to come (on its turning out that the income of the estate did not suffice for this purpose, so that the payment of the interest meant encroachment on capital), was held to be a "trust purpose" which prevented the trustees being able to pay a provision to a beneficiary having a vested right therein.

Further, of course, the principle of *Miller's Trs.* (*supra*) does not apply in cases where the beneficiary claiming payment does not have a fully vested and unqualified right of fee in the provision of which he claims payment. The recent cases in which a claim by a beneficiary for payment has failed on this ground, have been chiefly cases in which vesting has been held to be inconsistent with the directions or the powers exercised by the trustees (*Miller Richard's Trs.*, 1903, 5 F. 909; *Peden's Trs.*, 1903, 5 F. 1014). Thus, where the testator's primary purpose clearly was to secure, by a trust, the payment to his daughter of the interest on a capital sum "for her maintenance and support during her life," that was construed as imposing upon the trustees the duty of retaining the capital for an alimentary purpose, with the result that other provisions of the trust-deed, which *per se* pointed to the vesting of the capital sum in the daughter during her lifetime, were held ineffectual to subvert the primary trust purpose and entitle her to payment of the capital sum (*Douglas' Trs.*, 1902, 5 F. 69, *procertim*, per Lord McLaren, at p. 74).

Further, as pointed out by the judges of the First Division in their opinion in *Yuill's Trs.*, 1902, 4 F. 815, at p. 819, the rule of *Miller's Trs.* "supposes an indefeasible right of fee, because it may be that where, as in the case of *Chambers' Trs.*, 1878, 5 R. (H. L.) 151, the trustees are empowered in certain circumstances, or in their discretion, to reduce the right of fee to a life interest, it may be their duty to retain the fund until they shall be satisfied that the necessity will not arise for exercising the power."

Several cases of claims for payment of trust-funds in anticipation, upon the ground that the life-rentrix was past the age of child-bearing, have been recently before the Courts. The manner in which such claims have been dealt with continues to indicate some degree of uncertainty in the law. In *Gollan's Trs.*, 1901, 3 F. 1035, where certain children claiming immediate payment of the residue of a trust-estate, maintained, *inter alia*, that a lady who was fifty-one years of age was past child-bearing, so that there could be no more heirs of her body than the children who claimed, the Court refused to give effect to the contention, and Lord Adam observed (p. 1039): "I think the more recent authorities hold that a woman cannot be presumed to be past child-bearing at any particular age" (cp. *Beattie's Trs.*, 1898, 25 R. 765). On the other hand, where marriage-contract trustees held funds in trust for the spouses and the survivor in alimentary life interest, and for the children in fee, it was held, the marriage having subsisted for twenty-five years without any children having been born, and the wife having nearly reached the age of seventy, that the trustees were entitled, at the request of the spouses, to apply the trust-funds in the purchase, in the names of the trustees, of annuities on the joint lives of the spouses and the survivor, to be held and applied by the trustees as unassignable income for the alimentary use of the spouses (*De la Chavnette's Trs.*, 1902, 4 F. 745). Where the life-rentrix of a trust-fund—the life-rent not being declared alimentary—was fifty-seven years of age, and all her existing children (who had a vested fee in the fund, subject to partial defeasance in the event of other children being born to the life-rentrix and attaining majority) had attained majority, it was held that the trustees

were entitled to pay over the fund to the children upon these children purchasing an annuity for their mother equal to the income accruing from her life interest, and obtaining and delivering to the trustees a paid-up policy of insurance, providing for the payment of such sum as might be necessary to meet the claim of any future child or children who might be born and reach majority (*M'Pherson's Trs.*, 1902, 4 F. 921).

Conditional Direction to pay contrasted with Unqualified Gift.—The principle of *Bryson's Trs.*, 1880, 8 R. 142, has been followed in a number of cases. Thus, in *Graham's Trs.*, 1899, 2 F. 232, the direction was: "Upon my son William attaining the age of thirty years, I direct my trustees to convey to him" certain properties. It was held, following *Bryson's Trs.* (*supra*), upon William surviving the testator but dying before attaining the age of thirty, that, as there was no gift except the direction to convey on his attaining the age of thirty, no right to the properties had vested in him (cp. *Sword's Trs.*, 1902, 4 F. 1005—per Lord Trayner, at p. 1009; *Ross' Trs.*, 1902, 4 F. 840). In the last-mentioned case Lord Trayner said: "I think the view that vesting took place *a morte* cannot be sustained. The settlement makes no direct gift to the children, and contains no expression which can be regarded as equivalent to a gift. It contains simply a direction to the trustees to do something at a certain time, until when the children's right to claim does not arise."

In *Scott's Trs.*, 1900, 2 F. 516, a direction to "settle" a sum on children was construed as importing an absolute gift, and so was distinguished from a direction to "pay" as regards its effect on vesting (per Lord Adam, at p. 519).

Absence of Provision for a Continuing Trust.—In *Kennedy's Trs.*, 1901, 3 F. 1087, trustees were directed to apply a specified portion of the residue of the trust-estate in the purchase of an annuity for a legatee, with declarations to the effect that it should be alimentary, but there was no provision for the continuance of the trust. It was held that, as the truster did not contemplate a continuing trust for the protection of the legatee, and as an alimentary interest could be protected in no way except by a continuing trust, the effect would be that, even if the direction to purchase the annuity were carried out, it would be at the disposal of the legatee and attachable by his creditors. That being so, the Court held that the legatee should not be put to the disadvantage of receiving the bequest in the form of an annuity, but was entitled to payment of the specified portion of the residue in money.

Power to Trustees to make Advances.—In several recent cases a power to trustees to make advances has been regarded as an element pointing strongly to the beneficiaries having a vested interest. In *Gillies' Trs.*, 1900, 3 F. 238, Lord Moncreiff observed: "It is true that there is no direct gift of the capital . . . but this is one of the class of cases in which a gift of the interest, coupled with a power to the trustees to make advances of capital, is sufficient to indicate a gift of the capital to the beneficiary." (See also *Cairns*, 1901, 3 F. 545. Compare observations, per Lord M'Laren, in *White*, 1900, 2 F. 1171, at p. 1173, as to the weight to be attached, in determining the date of vesting, to an unqualified gift of the intermediate income to minor beneficiaries, in cases where there is no gift of the capital except a direction to pay on majority.) On the other hand, where power was given to advance to beneficiaries a third of their "prospective" shares, with a declaration that a beneficiary receiving such advance should be bound to pay to the trustees the legal interest on the sum so advanced "until the arrival of the period of division," the clause was regarded as

pointing to the postponement of vesting (*Ross' Trs.*, 1902, 4 F. 840). Lord Trayner, referring to this clause, said (p. 844): "If the right to this third had vested prior to the period of division, no interest would have been due or exigible. No one pays interest on funds belonging to himself. A direction to give children the interest or produce of their prospective shares between the date of testator's death and the period of division, is held to tell in favour of vesting, and the direction to the contrary, that the children should pay interest on an advance, seems to me to tell against it."

Presumption against Intestacy.—This presumption has been regarded as an element of some weight in several recent cases. Thus, in *Gillies' Trs.*, 1900, 3 F. 238, Lord Trayner (at p. 241) said: "I think further that it was a gift of fee, for this reason, that if it was not, then the fee was not disposed of at all, and would fall into intestacy, a result which is to be avoided if possible, and in itself rather inconsistent with the fact that the testator was by her deed disposing and intending to dispose of her whole estate."

Veterinary Surgeons.—The Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), amended by the Veterinary Surgeons Amendment Act, 1900 (63 & 64 Vict. c. 24), regulates the profession of veterinary surgeons. Veterinary surgeons are not prevented from dispensing medicines for animals under their care by the Pharmacy Act (32 & 33 Vict. c. 117).

Water Supply.—See BURGH (XIV. *supra*).

Workmen's Compensation Act, 1897 (XIII. 222).—The Act has now been extended to workmen employed in agriculture—"by any employer who habitually employs one or more workmen in such employment" (Workmen's Compensation Act, 1900, 63 & 64 Vict. c. 22). "Agriculture" includes "horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables" (s. 1). Where a workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, the Act applies also to the employment in other work (s. 1 (3)). If the employer agrees with a contractor for the execution by him of any work in agriculture, sec. 4 of the Act applies in respect of any workmen employed in such work as if the employer were an "undertaker." But where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, is liable to pay compensation to any workman employed on such work (s. 1 (2)).

Accident.—An accident caused to a workman by horse-play on the part of his fellow-workmen does not "arise out of" his employment, and the master is not liable to pay compensation (*London and Glasgow Engineering Co.*, 1901, 3 F. 564, 8 S. L. T. No. 339, 38 S. L. R. 381). Where a labourer going to obtain an article required in his work was killed in using a hoist which the workmen were forbidden to use, the Court held that the accident was one which arose in the course of his employment, and that he had not been guilty of serious and wilful misconduct (*Fullerton, Hodgart, & Barclay*, 1901, 3 F. 1006, 9 S. L. T. No. 131, 38 S. L. R. 738). But where a workman employed in decorating

a church, and, being unable to open the door, climbed over a spiked railing to get in by a window, when he spiked his foot and died as the result, it was held that the accident did not arise out of and in the course of his employment (*Gibson*, 1901, 3 F. 661, 8 S. L. T. No. 402, 38 S. L. R. 450). So held where a miner in going home was walking on a branch railway line leading to the mine, and was killed (*Caton*, 1902, 4 F. 989, 10 S. L. T. No. 129, 39 S. L. R. 762). But where a workman at a pit-head while walking across a line of rails to obtain a drink of water was knocked down and killed by a runaway hutch, the accident was held to have occurred in the course of his employment (*Keenan*, 1902, 5 F. 164, 10 S. L. T. No. 263, 40 S. L. R. 144. See also *Goodlet*, 1902, 4 F. 986, 10 S. L. T. No. 128, 39 S. L. R. 759; *McNicol*, 1899, 1 F. 604, 6 S. L. T. No. 432, 36 S. L. R. 428; *Callaghan*, 1900, 2 F. 240, 7 S. L. T. No. 338, 37 S. L. R. 313; *McQuibban*, 1900, 2 F. 732, 7 S. L. T. No. 417, 37 S. L. R. 526). It is a question of law for the decision of the Court whether or not the conduct of an injured person who has acted in breach of a regulation of his employment is "serious and wilful misconduct" in the sense of the Act (*Daily*, 1900, 2 F. 1044, 8 S. L. T. No. 64, 37 S. L. R. 782. See also *O'Hara*, 1903, 10 S. L. T. No. 401, 40 S. L. R. 355; *Merry & Cuninghame*, 1903, 10 S. L. T. No. 402). Although at the time of an accident a man is suffering from a disease which would shorten the natural course of his life, nevertheless if the accident be the proximate cause of death, his representatives are entitled to compensation (*Golder*, 1902, 5 F. 123, 10 S. L. T. No. 244, 40 S. L. R. 89).

Employment.—"Factory." A workman repairing a ship in a public dock half a mile away from his master's shipbuilding yard, is not employed on, in, or about a factory (*Barelay, Curle, & Co.*, 1901, 3 F. 437, 8 S. L. T. No. 314; 38 S. L. R. 321. See also *Ferguson*, 1902, 5 F. 105, 10 S. L. T. No. 230, 40 S. L. R. 58; and cp. *Edinburgh Tramways*, 1901, 4 F. 390, 9 S. L. T. No. 307; 39 S. L. R. 260). A wharf used for unloading a cargo (*Strain*, 1901, 3 F. 663, 8 S. L. T. No. 404, 38 S. L. R. 475), and ship's machinery used for the purpose of unloading, come within the category of a factory (*Reid*, 1903, 5 F. 435, 10 S. L. T. No. 31, 40 S. L. R. 352, overruling *Laing*, 1900, 3 F. 31, 8 S. L. T. No. 385, 38 S. L. R. 29). An itinerant threshing-mill, drawn from farm to farm by a traction-engine, and driven by the engine at the farms, may be a factory while in course of threshing; but it is not a factory while the traction-engine is pulling it along the road, or is disconnected from it (*George*, 1901, 4 F. 190, 9 S. L. T. No. 226, 39 S. L. R. 136).

Compensation.—Where a workman was killed immediately on commencing work, and before he had earned any wages, his widow was found entitled to £150, the statutory minimum under Sched. 1 (a) (1) (*Baird & Co.*, 1901, 3 F. 890, 9 S. L. T. No. 67, 38 S. L. R. 649. See also *Forrester & Co.*, 1901, 3 F. 650, 38 S. L. R. 448). As to "average weekly earnings," see *Small*, 1899, 1 F. 883, 7 S. L. T. No. 54, 36 S. L. R. 700; *Russell*, 1900, 2 F. 1312, 8 S. L. T. No. 145, 37 S. L. R. 931; *Gibb*, 1902, 4 F. 971, 10 S. L. T. No. 116, 39 S. L. R. 750; *McHugh*, 1902, 4 F. 909, 10 S. L. T. No. 74, 39 S. L. R. 690; *Grewer*, 1902, 4 F. 895, 10 S. L. T. 72, 39 S. L. R. 687; *Fleming*, 1902, 4 F. 890, 10 S. L. T. No. 73, 39 S. L. R. 684; *Campbell*, 1902, 5 F. 170, 10 S. L. T. No. 254, 40 S. L. R. 143; *Cadzow Coal Co.*, 1900, 3 F. 72, 8 S. L. T. No. 177.

Procedure.—Where in an action at common law and under the Employers' Liability Act the Sheriff is of opinion that the pursuer has failed to state a relevant case, it is competent to appoint a diet to discuss the defender's

liability under the Workmen's Compensation Act (*Henderson*, 1900, 2 F. 1127, 37 S. L. R. 857). In awarding compensation, the Sheriff, as arbitrator, must make inquiry, and may not pronounce decree by default (*United Collieries Company*, 1899, 2 F. 60, 7 S. L. T. No. 204, 37 S. L. R. 47). For opinions for guidance of sheriffs as arbiters, see *Rankine* (1903, 11 S. L. T. p. 283, 40 S. L. R. 828). The claim for compensation, which under sec. 2 has to be made within six months from the occurrence of the accident, may take the form of an application to the Sheriff to fix the amount due; preliminary notice is not necessary (*Great North of Scotland Rwy. Co.*, 1901, 3 F. 908, 9 S. L. T. No. 83, 38 S. L. R. 653).

Youthful Offenders.—Important amendments on the law relating to youthful offenders were introduced by the Youthful Offenders Act, 1901 (1 Edw. VII. c. 20).

Power to Discharge Youthful Offender without Punishment.—In Scotland, if upon the hearing of a charge against a child or young person for an offence punishable on summary conviction under any Act, whether past or future, the Court think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment, the Court, without proceeding to conviction, may dismiss the charge, and if the Court think fit, may order the person charged to pay such damages not exceeding forty shillings, and such costs, or either of them, as the Court think reasonable (s. 12).

Register of Convictions of Youthful Offenders.—In Scotland, in addition to any other register required by law, a separate register of convicted youthful offenders is to be kept for every summary Court by the chief constable or other person charged with the duty of keeping registers of convictions. This register applies to offenders of such age, and includes such particulars, as may be directed by the Secretary for Scotland. It is the duty of the keeper of the register, within three days after each conviction of an offender under fourteen years of age recorded therein, to transmit a copy of the entry relating to the offender to the clerk of the school board for the burgh or parish in which the offender resides (s. 13).

Removal of Disqualifications attaching to Theft.—Where a child or young person having been convicted of theft is discharged in accordance with the Probation of First Offenders Act, 1887, or otherwise, or is punished with whipping only, the conviction shall not be regarded as a conviction of theft for the purposes of sec. 15 of the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), or of any disqualification attaching to theft (s. 1).

Liability of Parent or Guardian in case of Offence committed by Child or Young Person.—Where a child or young person is charged with any offence for the commission of which a fine, damages, or costs may be imposed upon him by a Court of summary jurisdiction, and there is reason to believe that his parent or guardian has condoned to the commission of the alleged offence by wilful default or by habitually neglecting to exercise due care of him, the Court may, on information, issue a summons against the parent or guardian of the child or young person, charging him with so contributing to the commission of the offence. A summons to the child or young person may include a summons to the parent or guardian. The charges may be heard together, and for that purpose the charge against the child or young

person may be adjourned. If any fine, damages, or costs are imposed upon the youthful offender, the Court, if satisfied that the parent or guardian has conduced to the commission of the offence by wilful default or habitually neglecting to exercise due care of him, may order that the fine, etc., be paid by the parent or guardian instead of the child or young person; and may also order the parent or guardian to give security for the good behaviour of the child or young person (s. 2). If the parent or guardian be so ordered to pay or give security, no further charge under the Act can be brought against him in respect of any wilful default or habitual neglect to exercise due care prior to the making of such order; but he is liable for subsequent default (*ibid.*). Costs ordered are not to exceed the amount of the fine (s. 3).

Remand or Committal to Place other than Prison.—A Court of summary jurisdiction, on remanding or committing for trial any child or young person, may, instead of committing him to prison, remand or commit him into the custody of any fit person named in the commitment who is willing to receive him (due regard being had, where practicable, to the religious persuasion of the child), to be detained in that custody for the period for which he has been remanded, or until he is thence delivered by due course of law, and the person so named shall detain the child or young person accordingly, and if the child or young person escapes he may be apprehended without warrant and brought back to the custody in which he was placed. The Court may also exercise the like powers pending any inquiry concerning a child under sec. 19 of the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118). The Court may vary or revoke the remand or commitment, and if it is revoked the child or young person may be committed to prison. A county council, or the town council of a burgh (including a police burgh), or a school board, may defray the whole or any part of the expenses of the maintenance of children and young persons in custody under this section. Where a Court makes such an order, it may make an order on the parent or other person legally liable to maintain the child or young person, requiring that parent or person to pay, as a contribution towards the cost of maintaining the child or young person, such sum, not exceeding 5s. a week, as the Court may think fit, during the whole or any part of the time of his custody. The payment shall be made to the inspector of reformatory and industrial schools, or to a constable or other person authorised by the inspector to receive the payment, and the money paid shall be applied under the direction of the Treasury towards the expenses incurred under this section. There shall be paid, out of moneys provided by Parliament, towards the cost of maintaining any child or young person when in custody under this section, such contribution as may be fixed by regulations made by the Secretary of State with the approval of the Treasury. Where a child or young person is so placed in the custody of a fit person, payments shall be made from the police fund of the place to which the child or young person is sent for his maintenance, in accordance with the regulations made by the Secretary of State, but the police fund shall be repaid through the inspector of reformatory and industrial schools out of the contribution so fixed (s. 4). There is an appeal against an order for maintenance. Provision is made for the recovery of expenses of maintenance from the parent or other person legally liable (s. 6); and for contributions of county councils, which have contributed to the support of a child or young person in a reformatory or industrial school, towards the ultimate disposal of the child or young person (s. 8).

A Court of summary jurisdiction other than a Sheriff or stipendiary magistrate has no jurisdiction against a parent or guardian for any offence constituted by the Act. Where a child or young person is charged before a Court of summary jurisdiction other than a Sheriff or stipendiary magistrate, and it appears to such Court that proceedings under the Act should be taken against the parent or guardian, the Court may remit the further proceedings in the case to the Sheriff, to be dealt with by him under the Act (s. 16).

Proceedings against a child or young person charged with an offence, or against his parent or guardian, commence by complaint in ordinary form at the instance of the procurator-fiscal, and thereafter proceed, as regards citation, service, finding of security, and other steps of procedure, as nearly as may be in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts, or of any general or local Act of Parliament, or of any Act of Adjournal, regulating procedure in the Summary Criminal Court before which the complaint is brought. On the Court of Summary Jurisdiction remitting the further proceedings in a case to the Sheriff, the procurator-fiscal of the Sheriff may present a complaint, and thereafter proceed in the case as if it had originated with him in the first instance (Act of Adjournal, 31st May 1902).

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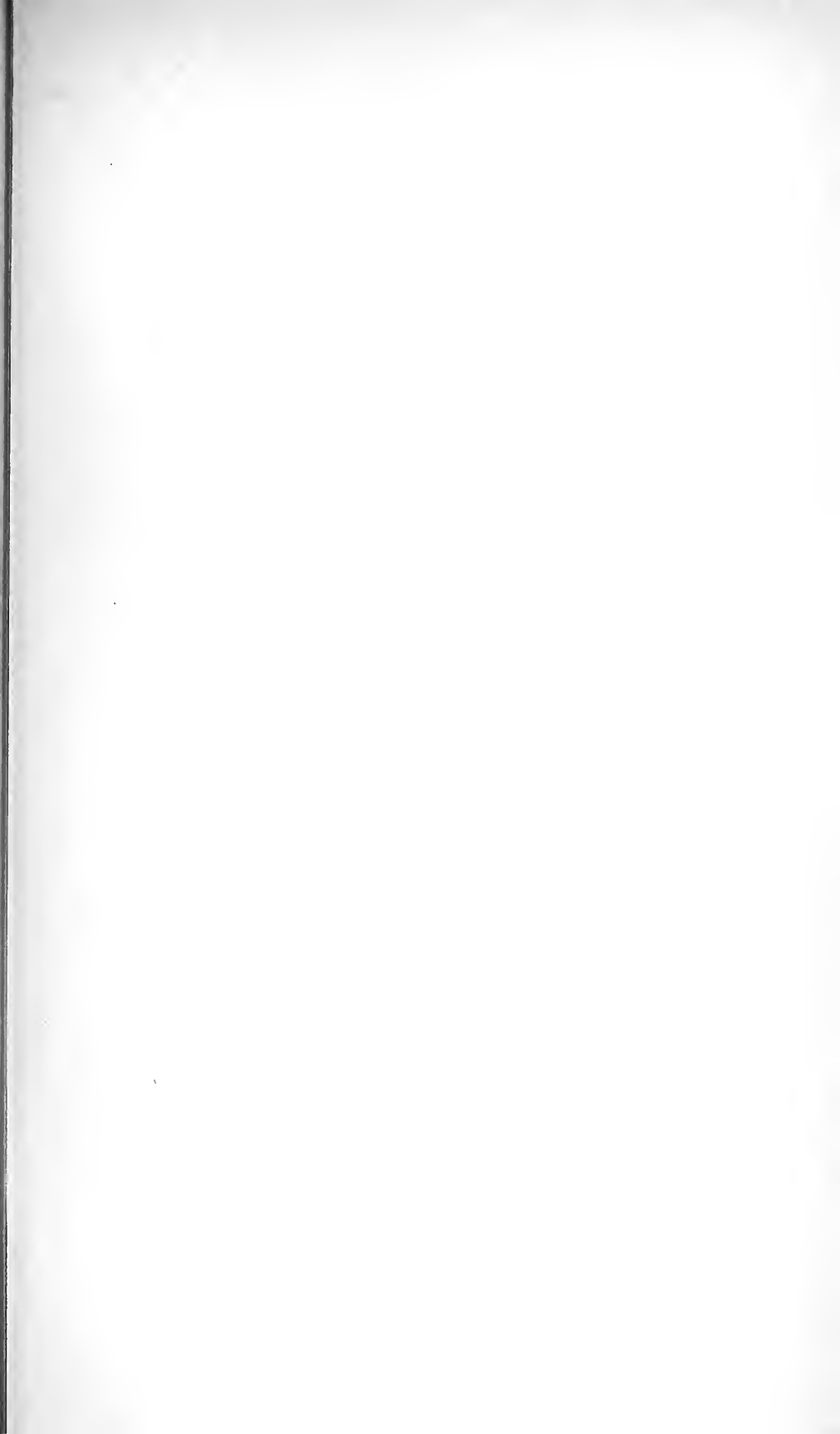
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